

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.

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

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.

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.

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.

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

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

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

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

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

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.

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

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.

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.

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

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

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

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

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

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

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

CONTROVERSY

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

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

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.

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

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

33. 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 C.

COUNT I

The Department's Notice of Deficiency was without effect because the statute of limitations bared the assessment

34. On or about February 28, 2012, Petitioner submitted a Request for Informal Conference Board Review for the Year at Issue.

35. As part of its Request, Plaintiff executed a waiver of the statute of limitations.

36. Pursuant to the terms of the waiver of the statute of limitations, the waiver was intended to run from the date of the request for review through 180 days after the Informal Conference Board (“ICB”) issued its action decision in the matter.

37. The ICB action decision was issued and dated on March 27, 2014.

38. In April 2014, after the ICB action decision was issued, the Department requested that Petitioner execute another waiver of the statute of limitations.

39. The April 2014 statute of limitations explicitly provided that “[w]e, the Illinois Department of Revenue and the taxpayer, agree that a notice of deficiency proposing an assessment of additional Illinois Income Tax due for taxable years 12/31/2008 may be issued at any time on or before 7/31/2014.”

40. Petitioner specifically asked the Department why it would need a waiver through July 31, 2014, when the ICB waiver extended the statute of limitations through September 27, 2014.

41. The Department did not explain its reasoning, but insisted that Plaintiff sign the additional waiver of statute of limitations.

42. Petitioner executed the second waiver of statute of limitations on April 23, 2014.

43. The Department issued the Notice on August 11, 2014.

44. In cases where “both waivers covered the same subject-matter but were inconsistent with one another in relation to the time element, the rule with relation to agreements between the parties concerning the same subject-matter is applicable. In such circumstances, it has invariably been decided that the later rather than the earlier writing will be held to be the agreement between the parties on the subject. *Helvering v. Ethel. D. Co.*, 70 F.2d 761, 764 (D.C. Cir. 1934).

45. The second waiver of the statute of limitations governs the Department's ability to issue an assessment of income tax against Petitioner.

46. Because the Department issued the Notice on August 11, 2014, after the July 31, 2014, date set by the second waiver of the statute of limitations, the Notice of Deficiency is without effect.

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

- a) finds and declares that the Notice of Deficiency was issued after the statute of limitations had run;
- b) finds and declares that the Notice of Deficiency was without effect;
- c) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

The Department's Notice of Deficiency is without effect because the Department did not supply a basis for the deficiency

47. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 46, inclusive, hereinabove.

48. The Illinois Taxpayer Bill of Rights requires the Department to furnish taxpayers with an explanation of the tax liabilities and penalties associated with a tax notice. 20 ILCS 2520/4(b).

49. The Illinois Income Tax Act requires that the Department not only explain what adjustments are made on a Notice of Deficiency, it is required to provide the reasons therefor. 35 ILCS 5/904(c).

50. The two issues in this case involve whether COB had nexus with Illinois and whether dividends paid by Home Fed, Reliance, and TC Preferred should be included in Plaintiff's income.

51. The Department gave no explanation in its Notice of Deficiency as to why COB has nexus with Illinois.

52. The Department gave no explanation in its notice as to why the dividends paid by Home Fed, Reliance, and TC Preferred should be included in Plaintiff's income.

53. The Department did not comply with the Taxpayer Bill of Rights.

54. The Department did not comply with 35 ILCS 5/904(c).

55. Without providing an explanation as to its adjustments, the Department has deprived the Petitioner of a meaningful opportunity to protest the adjustments.

56. Because the Notice does not comply with the Taxpayer Bill of Rights and 35 ILCS 5/904(c), depriving Petitioner of a meaningful opportunity to challenge the assessment, the Notice of Deficiency is invalid.

57. Taxpayers have the right to recover damages in a suit if the Department intentionally or recklessly disregards the tax laws or regulations, or rights of taxpayers, in collecting taxes. 20 ILCS 2520/5.

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

- a) finds and declares that the Notice of Deficiency does not comply with the Taxpayer Bill of Rights;
- b) finds and declares that the Notice of Deficiency did not comply with 35 ILCS 5/904(c)
- c) finds and declare the Notice of Deficiency invalid;

- d) grants Petitioner damages to the extent allowed by the Taxpayer Bill of Rights, including attorney fees up to \$100,000; and
- e) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT III

Subjecting COB to Illinois' taxing jurisdiction violates the Commerce Clause of the United States Constitution because COB did not have substantial nexus with the State of Illinois during the Year at Issue

58. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 57, inclusive, hereinabove.

59. 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.

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

61. 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).

62. 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).

63. 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).

64. 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.

65. COB is a Virginia corporation.

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

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

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

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

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

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

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

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

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

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

- a) finds and declares that COB does not have substantial nexus with Illinois;
 - b) finds and declares that COB is not subject to Illinois taxing jurisdiction;
- and

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

COUNT IV

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

75. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 74, inclusive, hereinabove.

76. "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).

77. "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.*

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

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

80. COB has no connection to Illinois.

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

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

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

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

85. 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.

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

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

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

- a) finds and declares that COB does not have 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 improperly adjusted Petitioner's numerator for the Year at Issue; and
- c) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT V

The Department's Notice of Deficiency is invalid because the Department lacked a sufficient basis for its determination that COB has nexus

88. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 87 inclusive, hereinabove.

89. During its audit of the Year at Issue, Department had no knowledge as to whether COB was a federally chartered credit card bank that offered credit card products and deposit products to customers throughout the United States.

90. During its audit of the Year at Issue, Department had no knowledge that COB offered its products to customers primarily through direct mail solicitations that originated from its offices in Virginia.

91. During its audit of the Year at Issue, Department had no knowledge that COB did not maintain any offices in Illinois, and did not own any property in Illinois.

92. During its audit of the Year at Issue, Department had no knowledge that COB did not have any employees in Illinois.

93. During its audit of the Year at Issue, Department had no knowledge that COB did not perform any services in Illinois.

94. The Department did not submit an Information Document Request requesting the information described in this Count V.

95. The Department is required to explain what adjustments are made on a Notice of Deficiency and the reasons therefor. 35 ILCS 5/904(c).

96. The Department provided no explanation for its adjustments.

97. The Department provided no explanation regarding its conclusion that COB's receipts should be included in the numerator of Petitioner's Illinois apportionment factor.

98. The Department had no factual basis upon which it made its determination that COB has nexus with Illinois.

99. Without any knowledge regarding the facts surrounding whether COB had nexus with Illinois, the Department's Notice cannot be presumed correct.

100. Because the Department's Notice cannot be presumed correct, the Department never satisfied its burden in making its prima facie case.

101. Petitioner has the right to recover damages in a suit if the Department intentionally or recklessly disregards the tax laws or regulations, or rights of taxpayers, in collecting taxes. 20 ILCS 2520/5.

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

- a) finds and declares that the Department lacked sufficient knowledge to include COB in Plaintiff's Illinois apportionment factor;
- b) finds and declares that the Department did not make its prima facie case against Petitioner;
- c) grants Petitioner damages to the extent allowed by the Taxpayer Bill of Rights including attorney fees up to \$100,000; and
- d) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT VI

The Department erred in including dividends paid to RHJ Holdings by Home Fed, Reliance and TC Preferred in Plaintiff's Combined Base Income

102. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 101, inclusive, hereinabove.

103. 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.

104. 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.

105. The Department denied Petitioner's dividend deduction on the basis that there is no provision in the Illinois Income Tax Act authorizing a deduction for this type of income.

106. Illinois's provision providing for the add-back of a dividend received by a corporation from a REIT is not applicable for the Year at Issue. 35 ILCS §5/203(b)(2)(E-15)

107. Home Fed, Reliance, TC Preferred and RHJ Holdings are all members of Petitioner's Illinois unitary group.

108. Illinois law requires the elimination of intercompany dividends paid by Home Fed, Reliance, and TC Preferred to RHJ Holdings for purposes of computing RHJ Holding's portion of Petitioner's combined base income.

109. 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.

WHEREFORE, Petitioner prays that the Court enter an Order that:

- a) finds and declares that the Department erred in including 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 improperly adjusted Petitioner's apportionment factor for the Year at Issue; and
- c) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT VII

Pursuant to Illinois law, Petitioner is entitled to a dividend received deduction

110. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 109, inclusive and hereinabove.

111. Illinois law provides that an entity, including a REIT, is treated as a corporation if it is so classified for federal income tax purposes. 35 ILCS § 5/1501(a)(4), Ill. Admin. Code 100.9750(b)(1)(b).

112. Under IRC § 857, a REIT must annually make distributions qualifying it for a deduction for dividends paid at least equal to the sum of 90 percent of REIT taxable income for the year (computed without the deduction for dividends paid and by excluding net capital gain) and 90 percent of the excess of net income from foreclosure property over the tax on the income.

113. For REITs taxable under IRC § 857, Illinois provides that taxable income properly reportable for federal income tax purposes is real estate investment trust taxable income for Illinois purposes. 35 ILCS § 5/203(e)(2)(D).

114. Illinois adopts the provisions of IRC §243, which allow corporations to deduct 100% of dividends received from members of an affiliated group.

115. For tax years beginning after December 31, 2008, Public Act 95-0233 provides that an addition to federal taxable income must be made for any deduction for dividends paid by a captive REIT. 35 ILCS § 5/203(b)(2)(E-15). This addition modification does not apply to the Year at Issue.

116. 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.

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

- a) finds and declares that Petitioner is entitled to subtract dividends paid by Home Fed, Reliance, and TC Preferred to RHJ Holdings for purposes of computing Petitioner's combined base net income;

- b) finds and declares that the Department improperly adjusted Petitioner's apportionment factor for the Year at Issue; and
- c) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT VIII

The Department's Notice of Deficiency is invalid because the Department lacked a sufficient basis for its determination that the dividends paid by Home Fed, Reliance, and TC Preferred to RHJ Holdings should be included in Petitioner's taxable income

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

118. During its audit of the Year at Issue, the Department had no knowledge that Home Fed was a Delaware corporation that qualified as a REIT for Federal income tax purposes of the Year at Issue.

119. During its audit of the Year at Issue, the Department had no knowledge that Reliance was a Connecticut corporation that qualified as a REIT for Federal income tax purposes during the Year at Issue.

120. During its audit of the Year at Issue, the Department had no knowledge that TC Preferred was a New Jersey corporation that qualified as a REIT for Federal income tax purposes during the Year at Issue.

121. The Department did not submit an Information Document Request requesting the information described in this Count.

122. The Department is required to not only explain what adjustments are made on a Notice of Deficiency, it is required to provide the reasons therefor. 35 ILCS 5/904(c).

123. The Department provided no explanation for its inclusion of the dividends paid by Home Fed, Reliance, and TC Preferred to RHJ Holdings in calculating Petitioner's combined net income.

124. The Department had no factual basis upon which it made its determination that Home Fed, Reliance, and TC Preferred were not REITs.

125. Without any knowledge regarding the facts surrounding whether Home Fed, Reliance, and TC Preferred were REITs, the Department's Notice of Deficiency cannot be presumed correct.

126. Since the Department's Notice of Deficiency cannot be presumed correct, the Department never satisfied its burden in making its prima facie case.

127. Taxpayer's have the right to recover damages in a suit if the Department intentionally or recklessly disregards the tax laws or regulations, or rights of taxpayers, in collecting taxes. 20 ILCS 2520/5.

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

- a) finds and declares that the Department lacked sufficient knowledge to include the dividends paid by Home Fed, Reliance, and TC Preferred to RHJ Holdings in calculating Petitioner's combined net income;
- b) finds and declares that the Department did not make its prima facie case against Petitioner;
- c) grants damages to the Petitioner to the extent allowed by the Taxpayer Bill of rights including attorney fees up to \$100,000; and
- d) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT IX

Alternatively, the receipts from Home Fed, Reliance, and TC Preferred should be included in Petitioner's Illinois apportionment factor denominator

128. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 127, inclusive and hereinabove.

129. For the Year at Issue, Petitioner was required to calculate its net income by excluding dividends paid by Home Fed, Reliance, and TC Preferred to RHJ Holdings.

130. If Petitioner is not required to exclude the dividends from its net income, then the receipts from Home Fed, Reliance, and TC Preferred should be treated as gross receipts under 35 ILCS 5/304(c).

131. As gross receipts, the receipts from Home Fed, Reliance, and TC Preferred should be included in Petitioner's Illinois apportionment factor denominator.

132. Because the income received from the underlying investment assets in Home Fed, Reliance, and TC Preferred was not earned in Illinois, the gross receipts should be excluded from the numerator of Petitioner's Illinois apportionment factor.

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

- a) finds and declares that the receipts from Home Fed, Reliance, and TC Preferred should be included in Petitioner's Illinois apportionment factor denominator; and
- b) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT X

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

133. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 132, inclusive and hereinabove.

134. 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.

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

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

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

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

139. 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.

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

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

142. 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.

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

- a) finds and declares that the Department improperly adjusted Petitioner's income as a result of the federal adjustments for the Year at Issue;
- b) finds and declares that the Petitioner shall owe significantly less tax on the federal adjustments for the Year at Issue; and
- c) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT XI

**The United Kingdom Trust receipts should be excluded from the numerator of
Petitioner's Illinois apportionment factor**

143. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 142, inclusive and hereinabove.

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

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

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

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

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

149. 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.

150. 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.

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

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

153. 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.

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

- a) finds and declares that the receipts earned by United Kingdom Trust should be excluded from Petitioner's Illinois apportionment factor denominator; and
- b) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT XII

Penalties should be abated based on Reasonable Cause

154. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 153, inclusive and hereinabove.

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

156. 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.

157. 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).

158. 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).

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

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

161. 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.

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

163. 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.

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

- a. finds and declares that the late payment penalties should be abated based on reasonable cause; and
- b. grants such further relief as this Court deems appropriate under the circumstances.

COUNT XIII

The Department's imposition of double interest to the Petitioner pursuant to the Tax Amnesty Act should be abated as it is in essence a penalty

164. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 163, inclusive, hereinabove.

165. 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.

166. 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.

167. 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.

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

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

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

171. 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.

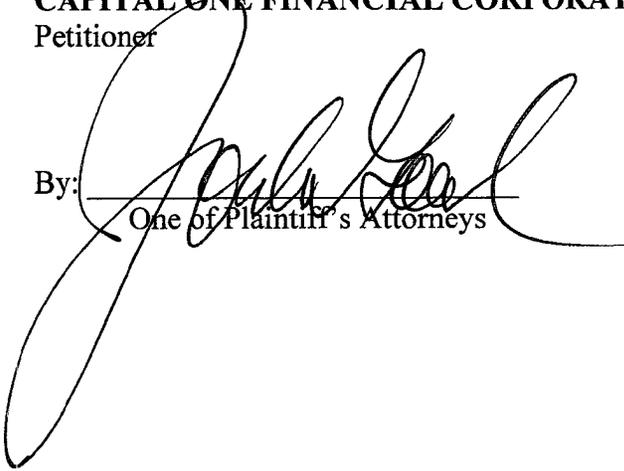
172. Because Petitioner acted with reasonable cause, double interest should be abated as it is equivalent to a penalty for failure to timely pay a tax liability.

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

- a) finds and declares that the double interest imposed by the Department on the Petitioner be abated as the Petitioner acted with reasonable cause when it paid its tax liability for the Year at Issue; and
- b) grants such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully submitted,

CAPITAL ONE FINANCIAL CORPORATION
Petitioner

By: 
One of Plaintiff's Attorneys

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(312) 606-3200

Notice of Claim Denial

for Form IL-1120, Corporation Income and Replacement Tax Return



January 13, 2016

RECEIVED JAN 20 2016

#BWNKMGV
#CNXX XX11 8978 4488#
CAPITAL ONE FINANCIAL CORPORATION

ATTN: SUZANNE BARTEK

1680 CAPITAL ONE DR
MCLEAN VA 22102-3407



Letter ID: CNXXXX1189784488

Taxpayer ID: 54-1719854
Account ID: 03469-97504
Audit ID: A138047488
Reporting period: December 2008

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

If you agree and your account is in balance, no action is required. You will receive a full refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of tax at issue, exclusive of penalty and interest is more than \$15,000, or if you are not claiming an overpayment of tax but the total penalties and interest are more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within 60 days of this notice. If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within 60 days, this denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final.

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

If you have questions, call us at the telephone number shown below.

Sincerely,

Constance Beard
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 524-5292

Statement

Date: January 13, 2016
Letter ID: CNXXXX1189784488
Name: CAPITAL ONE FINANCIAL CORPORATION
Taxpayer ID: 54-1719854
Account ID: 03469-97504
Audit ID: A138047488
Reporting period: December 2008

Computation of claim denial

Reporting period ending:	12/31/2008
Claim receive date:	07/22/2015
Amount of original claim:	\$13,452,787.00
Amount of proposed adjustment:	(\$13,452,787.00)
Net claim allowed:	\$0.00

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

Explanation of Audit Adjustments

Income Tax



January 13, 2016

#BWNKMGV
#CNXX X177 1671 1842#
CAPITAL ONE FINANCIAL CORPORATION
ATTN: SUZANNE BARTEK
1680 CAPITAL ONE DR
MCLEAN VA 22102-3407



Letter ID: CNXXX17716711842

Taxpayer ID: 54-1719854
Account ID: 03469-97504
Audit ID: A138047488
Reporting period: December 2008

Explanation of adjustments for tax period ending 12/31/2008

	<u>Income change</u>	<u>Tax impact</u>
We excluded members from your unitary group because they are an 80/20 company. [35 ILCS 5/1501(a)(27)] See attached list of the members of your unitary business group.		
We adjusted your Illinois net income or loss by changing the unitary group to exclude taxpayers conducting 80 percent or more of their business activities outside the United States. [35 ILCS 5/1501(a)(27)] See attached list of the members of your unitary business group.	\$0.00	\$0.00
We adjusted your subtraction modifications to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203(h)]	\$0.00	\$0.00
We adjusted the sales factor to include in the numerator receipts (other than receipts from sales of tangible personal property) which are allocable to Illinois. [5 ILCS 304(a)(3)(C-5)]	\$0.00	\$0.00
We adjusted your sales factor to include all business receipts on federal 1120, Lines 1 through 10, to the extent not expressly excluded from the sales factor. [86 IL Adm. Code 100.3370(a)(1)]	\$0.00	\$0.00

Unitary Member List

Date: January 13, 2016
Letter ID: CNXXX17716711842
Name: CAPITAL ONE FINANCIAL CORPORATION
Taxpayer ID: 54-1719854
Account ID: 03469-97504
Audit ID: A138047488
Reporting period: December 2008
Tax period ending: 12/31/2008

<u>Name</u>	<u>FEIN</u>	<u>Status</u>
CAPITAL ONE FINANCIAL CORPORATION	54-1719854	
CAPITAL ONE CANADA HOLDINGS, INC.	54-2003169	
CAPITAL ONE SERVICES, INC.	54-1780389	
CAPITAL ONE LOAN MANAGEMENT, INC.	31-1815499	
CAPITAL ONE (NOTTINGHAM) ESTATES, INC.	54-1902748	Deleted
CAPITAL ONE AUTO FINANCE, INC.	75-2163778	
THE WESTMORELAND AGENCY, INC.	54-1858389	
COSI RECEIVABLES MANAGEMENT, INC.	54-1798282	
CAPITAL ONE REAL ESTATE HOLDINGS, INC.	54-1882552	Deleted
CAPITAL ONE REALTY, INC.	54-1820020	
CAPITAL ONE BANK	54-1719855	
CAPITAL ONE PROPERTIES, INC.	54-1882554	
RENAISSANCE PARK PROPERTIES, INC.	54-1942805	Deleted
WORLDSCAPE, INC.	54-1820021	
NORTH HILL ADVISORS, INC.	54-1966137	
CAPITAL ONE COMMUNICATIONS, INC.	54-1865973	Deleted
CAPITALONE E-COMMERCE, INC.	54-1811982	Deleted
CAPITAL ONE SOUTH AFRICA HOLDINGS, INC.	54-1977886	
COIL HOLDINGS, INC.	54-1820018	
CAPITAL ONE FINANCE CO.	54-1798280	Deleted
AMERICA ONE COMMUNICATIONS, INC.	54-1760725	
OAKSTONE VENTURES, INC.	54-1760723	
PF FUNDING CORP.	33-0836624	Deleted
NAVION SOLUTIONS, INC.	54-1873239	Deleted
CAPITAL ONE INSURANCE AGENCY, INC.	54-1798275	
CONSUMERS DIRECT INSURANCE AGENCY	54-1798276	
AFP II INVESTMENT CORP.	01-0626560	

Unitary Member List

Date: January 13, 2016
Letter ID: CNXXX17716711842
Name: CAPITAL ONE FINANCIAL CORPORATION
Taxpayer ID: 54-1719854
Account ID: 03469-97504
Audit ID: A138047488
Reporting period: December 2008
Tax period ending: 12/31/2008

<u>Name</u>	<u>FEIN</u>	<u>Status</u>
CAPITAL ONE COMMUNITY DEVELOPMENT CO	38-3712898	
CAPITAL ONE HOME LOANS HOLDINGS, INC.	41-2179342	
ONYX ACCEPTANCE CORP.	33-0577635	
ONYX ACCEPTANCE FINANCIAL CORP.	33-0639768	
C1 INS CORP., INC.	75-2834361	
CAPITAL ONE, NATIONAL ASSOCIATION	72-0210640	
HRE CORP.	72-0981707	
GUARANTY REALTY CORP.	72-6019699	
GUARANTY PROPERTIES, INC.	72-0789757	
HIBERNIA CAPITAL CORP.	72-1316575	
CAPITAL ONE MORTGAGE CORP. OF	72-1354015	
TEXARKANA NATIONAL MORTGAGE CO., INC.	75-1367938	
HIBERNIA INSURANCE AGENCY OF TEXAS	72-1418387	
THE FIRST NATIONAL CO. OF MARSHA	75-1101806	
CAPITAL ONE SOUTHCOAST, INC.	72-1469382	
ONEPERCENT HOLDING CORP.		Deleted
COF AVIATION CORP.	43-1989353	
CAPITAL ONE PAYMENT SERVICES CORPORA	20-0063852	
CAPITAL ONE MERCHANT SERVICES CORP.	76-0486509	
ISC-SULPHUR HOLDING, INC.	26-0750415	
CAPITAL ONE NA LIHTC, INC.	26-0403948	
COCRF SUBCDE V, LLC	26-1404297	
CAPITAL ONE COMMUNITY RENEWAL FUND	20-3334454	
COCRF SUBCDE III, LLC	83-0478930	
COCRF SUBCDE IV, LLC	83-0478926	
CAPITAL ONE NMTM MANAGER, INC.	26-0803635	
COCRF SUBCDE VI, LLC	26-1404545	
COCRF SUBCDE VII, LLC	26-1404637	

Unitary Member List

Date: January 13, 2016
 Letter ID: CNXXX17716711842
 Name: CAPITAL ONE FINANCIAL CORPORATION
 Taxpayer ID: 54-1719854
 Account ID: 03469-97504
 Audit ID: A138047488
 Reporting period: December 2008
 Tax period ending: 12/31/2008

<u>Name</u>	<u>FEIN</u>	<u>Status</u>
COCRF SUBCDE VIII, LLC	26-1404720	
COCRF SUBCDE IX, LLC	26-1404831	
COCRF SUBCDE X, LLC	26-1405756	
COCRF SUBCDE XI, LLC	26-1405838	
COCRF SUBCDE XII, LLC	26-1405894	
CAPITAL ONE COMMUNITY RENEWAL FUND	20-3334419	
CUTCHCO CORP.	11-2986661	
CAPITAL ONE INVESTMENT SERVICES CORP	11-2982178	
NFB DEVELOPMENT CORP.		Deleted
SUPERIOR SAVINGS OF NEW ENGLAND N.A.	06-0270180	
CLARE ELM CORP.	13-2619107	
COMPASS FOOD SERVICES CORP.	11-3321606	
NORTH FORK CAPITAL CORP.	11-2953085	
AMIVEST CORP.	13-2627724	
ALL POINTS CAPITAL CORP.	11-3516828	
CBMC, INC.	13-3809890	
GREENPOINT AGENCY, INC.	33-0812686	Deleted
GREENPOINT CREDIT LLC CORP.	33-0862379	Deleted
GREENPOINT MORTGAGE FUNDING, INC.	13-3210378	
NORTH FORK COMMUNITY DEVELOPMENT COR	11-3245047	
GREENPOINT MORTGAGE SECURITIES, INC.	68-0397342	
HEADLANDS INSURANCE AGENCY	68-0329001	
HEADLANDS MORTGAGE CO.	94-2851992	
JAMSAB REALTY CORP.	11-2209667	
CAPITAL ONE AGENCY CORP	11-2689005	
MARIN CONVEYANCING CORP.	68-0325250	
CAPITAL ONE MARINE FINANCE INC	42-1553215	

Unitary Member List

Date: January 13, 2016
Letter ID: CNXXX17716711842
Name: CAPITAL ONE FINANCIAL CORPORATION
Taxpayer ID: 54-1719854
Account ID: 03469-97504
Audit ID: A138047488
Reporting period: December 2008
Tax period ending: 12/31/2008

<u>Name</u>	<u>FEIN</u>	<u>Status</u>
CAPITAL ONE LEVERAGE FINANCE CORP	20-1339996	
NFB FUNDING CORP.	11-3466119	
RHJ HOLDINGS, INC.	16-1236135	
NFB PAYROLL SERVICES LTD.	20-3938674	
NORTH FORK NATIONAL COMMERCIAL LENDI	20-2156228	
NORTH FORK NEW MARKETS CREDIT CORP.	20-0180939	
CAPITAL ONE BUSINESS SERVICES, INC.	26-1413079	
NFB HOLDING CORP.	20-2394807	
TCNJ CORP.	22-3011246	
LONG ISLAND MORTGAGE CORP.	11-2785198	
AFTA REAL ESTATE, INC.	11-2411992	
BEFORE REAL ESTATE, INC.	11-2411991	
298 15TH STREET REALTY CORP.	11-3149244	
3090 OCEAN AVE. REALTY CORP.	13-3948802	
JAM-VEST CORP.	11-2901412	
NEERG CORP.	11-3162435	
NEERG SECOND CORP.	11-3162549	
AMI-VEST CAPITAL, INC.	13-3055715	
JASTHREE, INC.	11-2284994	
ALPHA REO REALTY CORP.	11-3202254	
ORAC, INC.	11-2762898	
ROCK PROPERTIES, LTD.	06-1211717	
BETA REO CORP.	11-3218525	
NORTH FORK CAPITAL SOURCE GROUP	33-1058491	
SEMPER PARATUS, INC.	11-2240138	
PAUMANOK SERVICE CORP.	11-2296560	
ARMSTRONG ACQUISITION CORP.		Deleted
GREENPOINT PURCHASING CORP.	11-3339393	

Unitary Member List

Date: January 13, 2016
Letter ID: CNXXX17716711842
Name: CAPITAL ONE FINANCIAL CORPORATION
Taxpayer ID: 54-1719854
Account ID: 03469-97504
Audit ID: A138047488
Reporting period: December 2008
Tax period ending: 12/31/2008

<u>Name</u>	<u>FEIN</u>	<u>Status</u>
TCB INVESTMENT CORP.	22-2882089	
RELIANCE CAPITAL TRUST I	11-3444763	
NORTH FORK CAPITAL TRUST I	11-3355569	
NORTH FORK CAPITAL TRUST II	11-3421110	
NORTH FORK CAPITAL TRUST III	11-3421111	
CAPITAL ONE REINSURANCE CO.	03-0364362	
HOME FED REALTY CORP.	11-3374455	
TC PREFERRED FUNDING, INC.	22-3643317	
RELIANCE PREFERRED FUNDING CORP.	11-3416423	
GREENPOINT INSURANCE CORP.	86-0929901	
USNON US SOUTH AFRICA HOLDINGS ELIM		Deleted
ONEPERCENT HOLDING CORPORATION	01-0566153	
CAPITAL ONE ENERGY HOLDINGS CORP	26-3105235	



Capital One Financial Corporation
1680 Capital One Drive
McLean, VA 22102

Date: October 1, 2014

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Notice Section
Illinois Department of Revenue
P.O. Box 19012
Springfield, Illinois 62974-9012

Re: **Payment of Taxes, Interest and Penalty under Protest, Capital One Financial Corporation (Taxpayer ID: 54-1719854)**

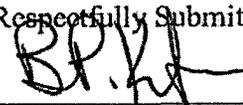
Dear Sir or Madam,

Please take notice that the enclosed payment of \$12,702,030.96 for the tax year ending December 31, 2008 is made under protest pursuant to provisions of the State Officers and Employees Money Disposition Act (30 ILCS 230/1 et seq). Also enclosed is Form RR-374, Notice of Payment Under Protest.

The enclosed payment \$12,702,030.96 is made pursuant to a Notice of Deficiency (copy enclosed) dated August 11, 2014 issued by the Illinois Department of Revenue to Capital One Financial Corporation. The enclosed payment represents the full amount of tax, interest and penalty shown on the Notice of Deficiency. Further, Capital One Financial Corporation will file suit in the Circuit Court of Sangamon County or Cook County within thirty (30) days in which they will be the plaintiffs in a case relating to the enclosed payment under protest.

If you have any questions with respect to this submission, please contact me at the following address:

Brian P. Kaufman
Senior Director, Tax Counsel
Capital One Services LLC
8000 Towers Crescent Drive, 16th Floor
Vienna, Virginia 22182
703-720-3181

Respectfully Submitted,

By: _____
Brian P. Kaufman, Tax Counsel



Notice of Payment Under Protest

Step 1: Identify yourself (and your business, if applicable)

1 First name _____ Middle initial _____ Last name _____

2 Capital One Financial Corporation

3 8000 Towers Crescent Drive, 16th Floor

Street address
Vienna VA 22182

City State ZIP

4 (703) 720 -- 3181

Daytime phone number

5 _____

Social security number

6 54 -- 1719854

Federal employer identification number

7 _____

Illinois business tax number

8 _____

License number

Step 2: Specify what payment is made under protest and the amount

9 Date 09 / 30 / 2014

10 You will please take notice that \$ 12,702,030.96 of the enclosed or attached remittance in the amount of \$ 12,702,030.96 for taxes due for the period of 12/31/2008, penalties thereon, and interest accrued to the date of this payment is made under protest as specified in the State Officers and Employees Money Disposition Act, 30 ILCS 230/2a and 2a.1.

11 Write the amount of tax, penalty, and interest paid under protest for each applicable tax type.

	Column A Tax	Column B Penalty	Column C Interest	Column D Total (A+B+C)	Column E Total for tax type
a Retailers' Occupation Tax					
(1) State portion					11a
(2) Local portion					
(3) Mass transit					
(4) Other:					
b Use Tax					
(1) State portion					11b
(2) Local portion					
(3) Mass transit					
(4) Other:					
c Service Occupation Tax/Service Use Tax					
(1) State portion					11c
(2) Local portion					
(3) Mass transit					
(4) Other:					
d Other Occupation Taxes or Fees (Identify tax type — e.g. Automobile Renting Occupation Tax, Tire User Fee.)					
(1)					11d
(2)					
(3)					
(4)					
e Income Tax					
(1) Individual Income Tax					11e
(2) Business Income Tax	7,401,349.00	2,961,039.60	2,339,642.36	12,702,030.96	
(3) Withholding Income Tax					
(4) Other:					
f Excise Tax (Identify tax type — e.g., Hotel Operators' Occupation Tax, Motor Fuel Use Tax.)					
(1)					11f
(2)					
(3)					
(4)					

12 Add Lines 11a through 11f and write the result. This is the total amount paid under protest. 12 12,702,030.96

Step 3: Identify and attach the case or cases for which the payment is made under protest

List the title of the case or cases, the court in which the case or cases are pending, and the general court number assigned to each. If more than one suit is pending, identify the amount paid under protest for each case. If you are filing at more than one location, list the specific city or county and the amount of each payment made under protest. Please tell us if a case has not been filed yet.

Step 4: Read the statement and sign below

The undersigned is an original (or intervening) party plaintiff in case or cases identified in the attachment in relation to which the payment identified above is made under protest.

Signature of person making payment under protest: W. S. [Signature] 10/1/2014
 Authorized officer or agent: Chief Tax officer

Check Date: 09/30/2014

Check No. 01266757

Invoice Number	Invoice Date	Voucher ID	Gross Amount	Discount Available	Paid Amount
09262014	09/26/2014	04403606	12,702,030.96	0.00	12,702,030.96

Capital One Financial Corporation 54-1719854

Vendor Number	Name	Total Discounts
0000007505	ILLINOIS DEPARTMENT OF REVENUE	\$0.00

Check Number	Date	Total Amount	Discounts Taken	Total Paid Amount
01266757	09/30/2014	\$12,702,030.96	\$0.00	\$12,702,030.96

THE FACE OF THIS CHECK IS PRINTED GREEN. THE BACK CONTAINS A SIMULATED WATERMARK.

CAPITAL ONE SERVICES, LLC
PO BOX 85508
Richmond, VA 23285-5508

CAPITAL ONE, NA
P O Box 61540
New Orleans, LA 70161
84-72/652

01266757

CERTIFIED CHECK
ACCOUNTS PAYABLE

Not Valid
after 180 days

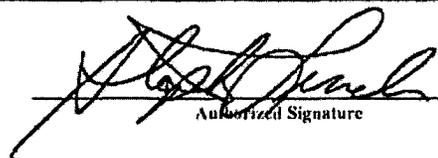
Date 09/30/2014

Pay Amount \$12,702,030.96***

Pay ****TWELVE MILLION SEVEN HUNDRED TWO THOUSAND THIRTY AND 96 / 100 USD DOLLAR****

To The
Order Of

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD, IL 62794-9012


Authorized Signature

Capital One Financial Corporation 54-1719854



012667570652007221542071923

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



August 11, 2014



Letter ID: CNXXX1565355362

#BWNKMGV
#CNXX X156 5355 5362#
CAPITAL ONE FINANCIAL CORPORATION

ATTN: SUSHIL POKHAREL

1680 CAPITAL ONE DR
MCLEAN VA 22102-3407

Taxpayer ID: 54-1719854
Reporting period: December 2008
Total Deficiency: \$12,702,030.96
Balance due: \$12,702,030.96



We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed but the total penalties and interest is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases**, file a protest with us, the Illinois Department of Revenue, within **60 days** of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

Brian Hamer
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012

(217) 524-5292

Statement

Date: August 11, 2014
Name: CAPITAL ONE FINANCIAL CORPORATION
Taxpayer ID: 54-1719854
Letter ID: CNXXX15653555362

Reasons for deficiency

We adjusted your taxable income by changing the members in the unitary group based on the 80/20 Rule.
[35 ILCS 5/1501(a)(27)]

We adjusted your business income and apportionment factors to include the income and apportionment factors of partnerships that are unitary with your business operations.
[86 IL Adm. Code 100.3380(d)]

We adjusted your sales everywhere to include factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported.
[86 IL Adm. Code 100.3370(a)(1)]

We adjusted your Illinois sales to include all factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported.
[86 IL Adm. Code 100.3370(a)(1)]

We adjusted your subtraction modification to remove items that are not allowable.
[35 ILCS 5/203(h)]

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2010, through November 8, 2010, your penalty and interest amounts may be doubled. [86 Ill. Admin. Code 520/101(b)]

Penalties

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%. [35 ILCS 735-3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

Interest

Interest on tax in the amount of \$2,339,642.36 has been computed through August 11, 2014.

Statement

Date: August 11, 2014
Name: CAPITAL ONE FINANCIAL CORPORATION
Taxpayer ID: 54-1719854
Letter ID: CNXXX15653555362

Computation of deficiency

Reporting Period: 31-Dec-2008

Income or loss	
Federal taxable income	\$2,840,186,170.00
Net operating loss deduction	\$3,659,767.00
State Municipal and other interest excluded	\$91,167,253.00
Income tax and replacement tax deduction	\$1,155,000.00
Illinois bonus depreciation addition	\$115,717,359.00
Other additions	\$0.00
Income or loss	\$3,051,885,549.00
Base income or loss	
Illinois bonus depreciation subtraction	\$34,847,857.00
Total subtractions	\$34,847,857.00
Base income or net loss	\$3,017,037,692.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	-\$13,194,648.00
Business income or loss	\$3,030,232,340.00
Apportionment formula	
Total sales everywhere	\$24,506,912,169.00
Total Illinois sales	\$1,018,766,380.00
Apportionment factor	0.041571
Business income/loss apportionable to IL	\$125,969,789.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$0.00
Base income or net loss allocable to IL	\$125,969,789.00
Net income	
Base income or net loss	\$125,969,789.00
IL net loss deduction (NLD)	\$0.00
Net income	\$125,969,789.00
Net replacement tax	
Replacement tax	\$3,149,245.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$3,149,245.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$3,149,245.00
Net income tax	
Income tax	\$6,046,550.00

Statement

Date: August 11, 2014
Name: CAPITAL ONE FINANCIAL CORPORATION
Taxpayer ID: 54-1719854
Letter ID: CNXXX15653555362

Recapture of investment credits	\$0.00
Income tax before credits	\$6,046,550.00
Income tax investment credits	\$0.00
Net income tax	\$6,046,550.00
Refund or balance due	
Net replacement tax	\$3,149,245.00
Net income tax	\$6,046,550.00
Total net income and replacement tax due	\$9,195,795.00
Minus tax previously assessed	-\$1,794,446.00
Total tax deficiency	\$7,401,349.00
UPIA-5 late-payment penalty (Audit)	\$2,961,039.60
Plus interest on tax through August 11, 2014	\$2,339,642.36
Total deficiency	* \$12,702,030.96
If you intend to pay under protest, you must pay this total deficiency amount.	
Balance due	* \$12,702,030.96



July 21, 2015

Illinois Department of Revenue
P.O. Box 19008
Springfield, IL 62794-9008

Re: Capital One Financial Corporation and Subsidiaries (the "Taxpayer")
Amended Corporation Income and Replacement Tax Return (Form IL-1120-X)
Tax Year: 2008
Federal Tax Identification Number (FEIN): 54-1719854

Dear Sir/Madam:

Pursuant to the provision under Illinois Income Tax Act (the "Act") Section 909(d), the Taxpayer is filing an Amended Corporation Income and Replacement Tax Return (Form IL-1120-X) for the tax year 2008 to seek the refund of additional taxes, interest and penalties it paid for this year on or about October 8, 2014 and January 13, 2015. The Taxpayer is seeking the refund of tax, interest and penalty in the amounts of \$13,452,787 for 2008 that was erroneously paid. This amended return is filed as a refund claim within the statute of limitations for refund claim as allowed under Section 911(a) of the Act, which provides that a refund claim may be filed within three years after the date the return was filed or one year after the date the taxes were paid.

If you have any questions with respect to this refund claim, please contact Brian Kaufman at (703) 720-3181.

Sincerely,

Mark Servis
Vice President - Tax

Enclosure: 2008 IL-1120-X

Illinois Department of Revenue
2008 IL-1120-X

**Amended Corporation Income
 and Replacement Tax Return**

Do not write in this box.

For tax years ending on or after December 31, 2008

Indicate what tax year you are amending: Tax year beginning 1/1/2008, ending 12/31/2008

Write the amount you are paying.

\$ 0.00



If you are filing an amended return for tax years ending before December 31, 2008, you can not use this form. For prior years, use the amended return form for that year.

Step 1: Provide the following business information

A Write your business name and mailing address. If you have a change, check this box.

F Write your federal employer identification number (FEIN).
54-1719854

Capital One Financial Corporation & Subsidiaries

Name

G Check the applicable box for the type of change being made.

NLD State change Federal change:

C/O

If a federal change, check one: Partial agreed Finalized

1680 Capital One Drive

Mailing address

If finalized, write the finalization date: 8/8/2013

Month Day Year

McLean VA 22102

City State Zip

H If you have completed the following federal forms, check the box and attach them to this return, if you have not previously done so.

Federal Form 8886 Federal Schedule M-3

B Check the box if your business is a Combined return (unitary) Foreign insurer.

C Check the box if you are filing this form only to report an increased net loss on Line 37, Column B.

I Check this box if you are filing a "corrected" return and are making the election to treat all nonbusiness income as business income.

D Check this box if you annualized your income on Form IL-2220.

J Write your Illinois corporate file (charter) number.

E Check this box if Illinois Schedule 1299-D is attached.

Step 2: Explain the changes on this return

SEE ATTACHMENT 1

Attach remittance payable to "Illinois Department of Revenue" here.

Step 3: Figure your income or loss

	A As most recently reported or adjusted	B Corrected amount
1 Federal Taxable Income from U.S. Form 1120.	1 2,840,186,170 00	1 2,753,857,677 00
2 Net operating loss deduction from U.S. Form 1120.	2 3,659,767 00	2 3,659,767 00
3 State, municipal, and other interest income excluded from Line 1.	3 91,167,253 00	3 91,167,253 00
4 Illinois income and replacement tax deducted in arriving at Line 1.	4 1,155,000 00	4 1,155,000 00
5 Illinois Special Depreciation addition (Form IL-4562).	5 115,717,359 00	5 115,717,359 00
6 Related-Party Expense addition (Schedule 80/20).	6 0 00	6 0 00
7 Distributive share of additions (Schedule K-1-P or K-1-T).	7 0 00	7 0 00
8 Other additions (Illinois Schedule M for businesses).	8 0 00	8 0 00
9 Add Lines 1 through 8. This is your total income or loss.	9 3,051,885,549 00	9 2,965,557,056 00

	A As most recently reported or adjusted	B Corrected amount
10 Write the amounts from Line 9	10 <u>3,051,885,549</u> .00	10 <u>2,965,557,056</u> .00
Step 4: Figure your base income or loss		
11 Federally-taxed refund of Illinois income and replacement tax.	11 <u>0</u> .00	11 <u>0</u> .00
12 Interest income from U.S. Treasury and exempt federal obligations.	12 <u>0</u> .00	12 <u>0</u> .00
13 Enterprise Zone or River Edge Redevelopment Zone dividend subtraction (Schedule 1299-B).	13 <u>0</u> .00	13 <u>0</u> .00
14 Enterprise Zone or River Edge Redevelopment Zone interest subtraction (Schedule 1299-B).	14 <u>0</u> .00	14 <u>0</u> .00
15 High Impact Business Dividend subtraction (Schedule 1299-B).	15 <u>0</u> .00	15 <u>0</u> .00
16 High Impact Business Interest subtraction (Schedule 1299-B).	16 <u>0</u> .00	16 <u>0</u> .00
17 Contribution subtraction (Schedule 1299-B).	17 <u>0</u> .00	17 <u>0</u> .00
18 Contribution to certain job training programs.	18 <u>0</u> .00	18 <u>0</u> .00
19 Foreign Dividend subtraction (Schedule J).	19 <u>0</u> .00	19 <u>0</u> .00
20 Illinois Special Depreciation subtraction (Form IL-4562).	20 <u>34,847,857</u> .00	20 <u>34,847,857</u> .00
21 Related-Party Expenses subtraction (Schedule 80/20).	21 <u>0</u> .00	21 <u>0</u> .00
22 Distributive share of subtractions (Schedule K-1-P or K-1-T).	22 <u>0</u> .00	22 <u>0</u> .00
23 Other subtractions (Schedule M for businesses).	23 <u>0</u> .00	23 <u>1,034,793,834</u> .00
24 Total subtractions. Add Lines 11 through 23.	24 <u>34,847,857</u> .00	24 <u>1,069,641,691</u> .00
25 Base income or net loss. Subtract Line 24 from Line 10.	25 <u>3,017,037,692</u> .00	25 <u>1,895,915,365</u> .00

If the amount on Line 25 is derived inside and outside Illinois, complete Step 5. Otherwise, go to Step 6.

Step 5: Figure your income allocable to Illinois

26 Nonbusiness income or loss (Schedule NB).	26 <u>0</u> .00	26 <u>0</u> .00
27 Non-unitary partnership business income or loss included in Line 25.	27 <u>-13,194,648</u> .00	27 <u>-13,194,648</u> .00
28 Add Lines 26 and 27.	28 <u>-13,194,648</u> .00	28 <u>-13,194,648</u> .00
29 Business income or loss. Subtract Line 28 from Line 25.	29 <u>3,017,037,692</u> .00	29 <u>1,895,915,365</u> .00
30 Total sales everywhere (this amount cannot be negative).	30 <u>24,506,912,169</u> .00	30 <u>27,529,692,308</u> .00
31 Total sales inside Illinois (this amount cannot be negative).	31 <u>1,018,766,380</u> .00	31 <u>217,226,685</u> .00
32 Apportionment Factor. Divide Line 31 by Line 30.	32 <u>0.041571</u>	32 <u>0.007891</u>
33 Business income or loss apportionable to Illinois. Multiply Line 29 by Line 32.	33 <u>125,969,789</u> .00	33 <u>14,960,668</u> .00
34 Nonbusiness income or loss allocable to Illinois (Schedule NB).	34 <u>0</u> .00	34 <u>0</u> .00
35 Non-unitary partnership business income or loss apportionable to Illinois.	35 <u>0</u> .00	35 <u>0</u> .00
36 Base income or net loss allocable to Illinois. Add Lines 33 through 35.	36 <u>125,969,789</u> .00	36 <u>14,960,668</u> .00

Step 6: Figure your net income

37 Base income or net loss from Line 25 or Line 36.	37 <u>125,969,789</u> .00	37 <u>14,960,668</u> .00
38 Illinois net loss deduction (Schedule NLD or UB/NLD). If Line 37 is zero or a negative amount, write "0."	38 <u>0</u> .00	38 <u>0</u> .00
39 Net income. Subtract Line 38 from Line 37.	39 <u>125,969,789</u> .00	39 <u>14,960,668</u> .00

A	B
As most recently reported or adjusted	Corrected amount

Step 7: Figure your net replacement tax

40 Replacement tax. Multiply Line 39 by 2.5% (.025).	40 <u>3,149,245 00</u>	40 <u>374,017 00</u>
41 Recapture of investment credits (Schedule 4255).	41 <u>0 00</u>	41 <u>0 00</u>
42 Replacement tax before credits. Add Lines 40 and 41.	42 <u>3,149,245 00</u>	42 <u>374,017 00</u>
43 Investment credits (Form IL-477).	43 <u>0 00</u>	43 <u>0 00</u>
44 Net replacement tax. Subtract Line 43 from Line 42. If negative, write "0."	44 <u>3,149,245 00</u>	44 <u>374,017 00</u>

Step 8: Figure your net income tax

45 Income Tax. Multiply Line 39 by 4.8% (.048).	45 <u>6,046,550 00</u>	45 <u>718,112 00</u>
46 Recapture of investment credits (Schedule 4255).	46 <u>0 00</u>	46 <u>0 00</u>
47 Income tax before credits. Add Lines 45 and 46.	47 <u>6,046,550 00</u>	47 <u>718,112 00</u>
48 Income tax credits (Schedule 1299-D).	48 <u>0 00</u>	48 <u>0 00</u>
49 Net income tax. Subtract Line 48 from Line 47. If negative, write "0."	49 <u>6,046,550 00</u>	49 <u>718,112 00</u>

Step 9: Figure your refund or balance due

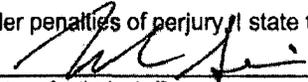
50 Net replacement tax from Line 44.	50 <u>3,149,245 00</u>	50 <u>374,017 00</u>
51 Net income tax from Line 49.	51 <u>6,046,550 00</u>	51 <u>718,112 00</u>
52 Total net income and replacement taxes. Add Lines 50 and 51.	52 <u>9,195,795 00</u>	52 <u>1,092,129 00</u>
53 Payments		
a Credit from prior year overpayment.	a <u>0 00</u>	
b Total estimated payments.	b <u>1,155,000 00</u>	
c Form IL-505-B (extension) payment.	c <u>625,000 00</u>	
d Pass-through entity payments from Schedule K-1-P or K-1-T.	d _____	
Total payments. Add Lines 53a through 53d.		53 <u>1,780,000 00</u>
54 Tax paid with original return (do not include penalties and interest).		54 <u>0 00</u>
55 Subsequent tax payments made since the original return.		55 <u>12,764,916 00</u>
56 Total tax paid. Add Lines 53, 54, and 55.		56 <u>14,544,916 00</u>
57 Total amount previously refunded and/or credited for the year being amended.		57 <u>0 00</u>
58 Net tax paid. Subtract Line 57 from Line 56.		58 <u>14,544,916 00</u>
59 Refund. Subtract Line 52 from Line 58.		59 <u>13,452,787 00</u>
60 Tax due. Subtract Line 58 from Line 52.		60 <u>0 00</u>
61 Penalty (See instructions.)		61 _____
62 Interest (See instructions.)		62 _____
63 Total balance due. Add Lines 60 through 62.		63 <u>0 00</u>

▶ **Make your check payable to "Illinois Department of Revenue."** ◀

Special Note → Write the amount of your payment on the top of Page 1 in the space provided.

Step 10: Sign here

Under penalties of perjury, I state that I have examined this return and, to the best of my knowledge, it is true, correct, and complete.


 Signature of authorized officer _____ Date 7/22/15 Title VICE PRESIDENT - TAX Phone (703) 720-1000

Signature of preparer _____ Date _____ Preparer's Social Security Number of firm's FEIN _____

Preparer firm's name (or yours, if self-employed) _____ Address _____ Phone _____

This form is authorized as outlined by the Illinois Income Tax Act. Disclosure of this information is REQUIRED. Failure to provide information could result in a penalty. This form has been approved by the Forms Management Center. IL-492-0106

Capital One Financial Corporation and Subsidiaries

FEIN: 54-1719854

Attachment to Form 2008 IL-1120-X – Step 2: Explanation for changes on this return

The Taxpayer is amending this return to correct the erroneous adjustment made by the Department of Revenue (“DOR”) on audit. The amounts on Column A reflect the erroneous adjustments made by the DOR on audit and the amounts on Column B reflect the correct amounts. In addition, by amending this return, the Taxpayer is seeking refund of additional tax, interest and penalties paid on audit on or about October 8, 2014 and January 13, 2015 pursuant to the provision under Illinois Income Tax Act Section 909(d).

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered by messenger before the hour of 5:00 p.m. on the 14th day of March, 2016.

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601

A handwritten signature in black ink, appearing to read "John Seal", is written over a horizontal line. The signature is highly stylized with large loops and a long, sweeping tail that extends to the right.