ILLINOIS INDEPENDENT TAX TRIBUNAL

PEPSICO INC., AND AFFILIATES,	)	
	)	Case No. 16-TT-82
Petitioner,	)	
	)	
v.	)	
	)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	

ANSWER

NOW COMES the Illinois Department of Revenue (the "Department"), through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to the Petition of PepsiCo Inc., and Affiliates ("Petitioner" or "Taxpayer"), respectfully pleads as follows:

PARTIES

1. PepsiCo is a publicly-traded corporation duly organized and existing under the laws of the state of Delaware.

   ANSWER: The Department admits that PepsiCo is a publicly-traded corporation. The Department denies that PepsiCo is incorporated under the laws of Delaware.

2. PepsiCo maintains its corporate headquarters at 700 Anderson Hill Road, Purchase, New York, 10577-1401 and its telephone number is 914-253-2000.

   ANSWER: The Department admits the allegation in Paragraph 2.

3. PepsiCo's tax identification number is 13-1584302.

   ANSWER: The Department admits the allegation in Paragraph 3.

4. The Department is an agency of the state of Illinois responsible for administering and enforcing the revenue laws of the state of Illinois.

ANSWER: The Department admits that it is an agency of the Executive Branch of the Illinois State Government and is tasked with enforcing the Illinois Income Tax Act (35 ILCS 5/101 *et seq*.), which is relevant to the legal claims raised in Taxpayer's Petition; the Department denies all other allegations in Paragraph 4.

JURISDICTION

5. On or about February 29, 2016, the Department issued a Notice of Deficiency to PepsiCo asserting additional tax due of $1,755,941 (exclusive of associated interest and penalties) for the tax year ending December 31, 2010 (the "2010 Notice"). A copy of the 2010 Notice is attached as Exhibit B.

ANSWER: The Department admits the allegations in Paragraph 5.

6. The 2010 Notice imposed $351,188.20 in late-payment penalty.

ANSWER: The Department admits the allegation in Paragraph 6.

7. The 2010 Notice imposed $217,428.20 in interest as of February 29, 2016.

ANSWER: The Department admits the allegation in Paragraph 7.

8. On or about February 29, 2016, the Department issued a Notice of Deficiency to PepsiCo asserting additional tax due of $4,696,736 (exclusive of associated interest and penalties) for the tax year ending December 31, 2011 (the "2011 Notice"). A copy of the 2011 Notice is attached as Exhibit C.

ANSWER: The Department admits the allegations in Paragraph 8.

9. The 2011 Notice imposed $939,347.20 in late-payment penalty.

ANSWER: The Department admits the allegation in Paragraph 9.

10. The 2011 Notice imposed $417,293.06 in interest as of February 29, 2016.

ANSWER: The Department admits the allegation in Paragraph 10.

11. Both the 2010 Notice and 2011 Notice (collectively the "Notices of Deficiency") result from the same Illinois audit (audit identification number A101371904). Unless otherwise noted, all present tense statements of fact and law herein also apply to the time periods subject to this audit and covered by the Notices of Deficiency.

ANSWER: The Department admits that both the 2010 Notice and 2011 Notice (collectively, the "Notices of Deficiency") result from the same Illinois audit (audit identification number A101371904). The Department denies all other allegations in Paragraph 11.

12. The Notices of Deficiency amount to $6,452,677 of tax deficiency in the aggregate, exclusive of penalty and interest.

ANSWER: The Department admits the allegation in Paragraph 12.

13. This Tribunal has original jurisdiction over all Department determinations reflected on Notices of Deficiency, among other notices, where the amount at issue exceeds $15,000, exclusive of penalties and interest. 35 ILCS 1010/1-45.

ANSWER: The Department admits the existence, force, and effect at all relevant times of the statute referred to in Paragraph 13. However, to the extent Petitioner implies in Paragraph 13 that the Tax Tribunal has jurisdiction over this matter, such an allegation is a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Regulation ("Rule") 310(b)(2) (86 Ill. Adm. Code §5000.310).

BACKGROUND

14. PepsiCo is a global food and beverage company.

ANSWER: The Department admits the allegation in Paragraph 14.

15. PepsiCo's core business is the manufacture, distribution and sales of consumer food, snack and beverage products under the Pepsi, Lays, Gatorade, Quaker, Tropicana brands, among others.

ANSWER: The phrase “core business” is vague and ambiguous. The Department therefore denies all allegations in Paragraph 15.

Pepsi Bottling Group Acquisition and Integration

16. On or about February 26, 2010, PepsiCo purchased The Pepsi Bottling Group ("PBG") and affiliated entities, including Woodlands Insurance Company, Inc. ("Woodlands").

ANSWER: Upon information and belief, the Department admits that PepsiCo purchased PBG on or about February 26, 2010. The phrase “affiliated entities” is vague and ambiguous as the entities are undefined. Therefore, Department denies the remaining allegations in Paragraph 16.

17. Also on or about February 26, 2010, PepsiCo purchased PepsiAmericas, Inc. ("PAS") and affiliated entities.

ANSWER: Upon information and belief, the Department admits that PepsiCo purchased PAS on or about February 26, 2010. The phrase “affiliated entities” is vague and ambiguous as the entities are undefined. Therefore, Department denies the remaining allegations in Paragraph 17.

18. PBG and PAS were the two largest independent bottlers of Pepsi products prior to their acquisition by PepsiCo.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 18 and demands strict proof thereof.

19. At the time of their acquisition, PBG and PAS together employed more than 84,000 people and owned more than $18 billion in assets to carry on their bottling and distribution activities.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 19 and demands strict proof thereof.

20. As a result of the PBG and PAS acquisitions, PepsiCo acquired more than 70 domestic and 120 international entities through which the independent bottlers conducted operations.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 20 and demands strict proof thereof.

21. In order to integrate the new entities, PepsiCo undertook a global restructuring of the acquired bottling operations.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 21 and demands strict proof thereof.

22. PepsiCo consolidated certain foreign operations under Frito-Lay North America, Inc. ("FLNA").

ANSWER: The phrase “certain foreign operations” is vague and ambiguous. The Department therefore denies the allegations in Paragraph 22.

23. PepsiCo formed Global Mobility LLC as a single member LLC owned by FLNA to hold foreign-based U.S. expatriates.

ANSWER: The Department admits PepsiCo Global Mobility, LLC was formed as a limited liability company, but lacks sufficient knowledge to either admit or deny the remaining allegations in Paragraph 23 and demands strict proof thereof.

24. These foreign-based U.S. expatriates perform services overseas for a variety of PepsiCo businesses.

ANSWER: The entirety of Paragraph 24 is vague and ambiguous. The Department therefore denies all allegations in Paragraph 24.

25. Global Mobility LLC is treated as a branch of FLNA for federal tax purposes.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 25 and demands strict proof thereof.

26. Approximately 32 of the acquired domestic entities, as well as several PepsiCo holding companies, were eliminated as part of the restructuring, including Woodlands.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 26 and demands strict proof thereof.

Captive Insurance Arrangements

27. Woodlands was a captive insurance company within the PBG group of affiliated entities.

ANSWER: The Department admits that Woodlands is a captive insurance company. The Department lacks sufficient knowledge to either admit or deny whether Woodlands resides within PBG and affiliates and demands strict proof thereof.

28. Woodlands insured certain PBG group risks, including property and casualty risks, in exchange for premiums.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 28 and demands strict proof thereof.

29. Mountainview Insurance Co., Inc. ("Mountainview"), a PepsiCo subsidiary, insures risks, including workers' compensation, automobile liability, public liability, and product

liability, for PepsiCo affiliates, members and non-members *(e.g.*, transportation companies) of the Illinois unitary business group, in exchange for premiums.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 29 and demands strict proof thereof.

Service Fee Income

30. The Concentrate Manufacturing Company of Ireland ("CMCI") is a PepsiCo affiliate that produces and sells soft drink beverage concentrate.

ANSWER: Upon information and belief, the Department admits the factual allegations in Paragraph 30.

31. CMCI has entered into a number of service agreements with affiliates that are members of the Illinois unitary business group (the "Domestic Service Providers").

ANSWER: The phrases “a number of service agreements” and “affiliates that are members of the Illinois Unitary business group” are vague and ambiguous as neither the agreements, nor the entities are defined. The Department admits the existence of the following agreements: Advertising and Marking Services Agreement effective February 23, 2003 between CMCI and Pepsi-Cola Advertising and Marking, Inc.; Research and Development Services Agreement effective December 28, 2003 between CMCI and QTG Development Company; Research and Development Services Agreement effective February 23, 2003 between CMCI and Pepsi-Cola Technical Operations, Inc.; Management Services Agreement effective February 23, 2003 between CMCI and Pepsi-Cola Management and Administrative Services, Inc.; and Management, Advertising and Marketing Services Agreement effective December 28, 2003 between CMCI and The

Gatorade Company. The agreements speak for themselves. Department denies the remaining allegations in Paragraph 31 and demands strict proof thereof.

32. The Domestic Service Providers provide services to CMCI, including, but not limited to, management, advertising, marketing and accounting services and, in exchange, receive an arm's length fee.

ANSWER: The term “Domestic Services Providers” is defined in such a way as to be vague and ambiguous because the entities included therein are not defined. The Department admits the existence of the following agreements: Advertising and Marking Services Agreement effective February 23, 2003 between CMCI and Pepsi-Cola Advertising and Marking, Inc.; Research and Development Services Agreement effective December 28, 2003 between CMCI and QTG Development Company; Research and Development Services Agreement effective February 23, 2003 between CMCI and Pepsi-Cola Technical Operations, Inc.; Management Services Agreement effective February 23, 2003 between CMCI and Pepsi-Cola Management and Administrative Services, Inc.; and Management, Advertising and Marketing Services Agreement effective December 28, 2003 between CMCI and The Gatorade Company. The agreements speak for themselves. The Department denies the remaining allegations in Paragraph 32.

PEPSICO'S ILLINOIS TAX FILINGS

33. PepsiCo, along with its unitary subsidiaries, timely filed an Illinois Income and Replacement Tax Return on a combined basis (an "Illinois Combined Return"), and paid

the tax shown due thereon, for tax year 2010 ("Tax Year 2010") and 2011 ("Tax Year 2011," collectively the "Tax Years at Issue").

ANSWER: Petitioner's assertion that it timely filed a tax return is a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits that Petitioner filed an Illinois Income and Replacement Tax Return on a combined basis (an "Illinois Combined Return") for the tax year 2010 ("Tax Year 2010") on October 11, 2011 showing Total Net Income and Replacement Taxes of $4,495,069.00 and paid the tax of $4,495,069.00 via a credit carry-forward from the prior year. The Department admits that Petitioner filed an Illinois Combined Return for the tax year 2011 ("Tax Year 2011") on October 10, 2012 showing tax due of $0.00. The Department denies the remaining factual allegations in Paragraph 33.

34. Section 1501(a)(27) of the Illinois Income Tax Act, 35 ILCS 5/101 et seq. (the "IITA") excludes affiliates with more than 80% of their business activity, as measured by property and payroll, outside the United States from an Illinois Combined Return.

ANSWER: Paragraph 34 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/1501(a)(27) and states that such law speaks for itself.

35. More than 80% of FLNA's business activity, property and payroll, is outside the United States.

ANSWER: The Department denies the allegations in Paragraph 35.

36. FLNA was properly excluded from PepsiCo's 2010 and 2011 Illinois Combined Returns.

ANSWER: Paragraph 36 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 36.

37. More than 80% of CMCI's business activity, property and payroll, was outside the United States.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 37 and demands strict proof thereof.

38. CMCI was properly excluded from PepsiCo's 2010 and 2011 Illinois Combined Returns.

ANSWER: Paragraph 38 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 38.

39. More than 80% of PepsiCo Puerto Rico, Inc.'s ("Pepsi PR") business activity, property and payroll, is outside the United States.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 39 and demands strict proof thereof.

40. Pepsi PR was properly excluded from PepsiCo's 2010 and 2011 Illinois Combined Returns.

ANSWER: Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 40.

41. IITA Section 1501(a)(27) prohibits the inclusion of insurance companies in an Illinois Combined Return with non-insurance company affiliates.

ANSWER: Paragraph 41 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/1501(a)(27) and states that such law speaks for itself.

42. Mountainview is an insurance company.

ANSWER: The Department admits the allegation in Paragraph 42 with respect to Mountainview Insurance Co., Inc., FEIN: 03-0375422.

43. Mountainview was properly excluded from PepsiCo's 2010 and 2011 Illinois Combined Returns.

ANSWER: Paragraph 43 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 40.

44. Woodlands is an insurance company.

ANSWER: The Department admits the allegations in Paragraph 44 with respect to Woodlands Insurance Company, Inc., FEIN: 22-3844726.

45. Woodlands was properly excluded from PepsiCo's 2010 and 2011 Illinois Combined Returns.

ANSWER: Paragraph 45 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 45.

46. FLNA does not own or maintain property or payroll in Illinois.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 46 and demands strict proof thereof.

47. CMCI does not own or maintain property or payroll in Illinois.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 47 and demands strict proof thereof.

48. Pepsi PR does not own or maintain property or payroll in Illinois.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 48 and demands strict proof thereof.

49. Mountainview does not own or maintain property or payroll in Illinois.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 49 and demands strict proof thereof.

50. Woodlands did not own or maintain property or payroll in Illinois.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 50 and demands strict proof thereof.

51. FLNA, CMCI, Pepsi PR, Mountainview, and Woodlands did not file separate Illinois tax returns for the Tax Years at Issue.

ANSWER: Based on knowledge, information, and belief after a reasonable inquiry, the Department admits the allegations in Paragraph 51.

52. FLNA, CMCI, Pepsi PR, Mountainview, and Woodlands were not required to file separate Illinois tax returns for the Tax Years at Issue.

ANSWER: Paragraph 52 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 52 and demands strict proof thereof.

PROCEDURAL HISTORY

53. On or about April 2, 2014, the Department initiated the audit of the Tax Years at Issue.

ANSWER: The Department admits the allegation in Paragraph 53.

54. As of April 2, 2014, there were approximately six months left in the three year statute of limitations applicable to Tax Year 2010.

ANSWER: Paragraph 54 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the phrase "approximately six months" is imprecise; the Department therefore denies the remaining allegations in Paragraph 54.

55. As of April 2, 2014, there were approximately 18 months left in the three year statute of limitations applicable to Tax Year 2011.

ANSWER: Paragraph 55 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the phrase "approximately 18 months" is imprecise; the Department therefore denies the remaining allegations in Paragraph 55.

56. On or about April 25, 2014, at the request of the Department, Taxpayer signed an IL-872 extending the statute of limitations for Tax Year 2010 until April 15, 2015.

ANSWER: Department admits the factual allegations in Paragraph 56.

57. On or about December 15, 2014, at the request of the Department, Taxpayer signed a second IL-872 further extending the statute of limitations for Tax Year 2010 until October 15, 2015.

ANSWER: The Department admits Petitioner signed and the Department accepted an IL-872 dated December 15, 2014 by Petitioner, which extended the statute of limitations for Tax Year 2010 to October 15, 2015.

58. On or about April 21, 2015, at the request of the Department, Taxpayer signed a third IL-872 further extending the statute of limitations for Tax Year 2010 and Tax Year 2011 until March 15, 2016.

ANSWER: The Department admits Petitioner signed and the Department accepted an IL-872 dated April 21, 2015 by Petitioner, which extended the statute of limitations for Tax Year 2010 and Tax Year 2011 to March 15, 2016.

59. On or about December 21, 2015, the Department issued an EDA-25, Auditor's Report, reflecting a total tax deficiency of $6,417,929, exclusive of penalty and interest for Tax Year 2010 and Tax Year 2011 combined.

ANSWER: Department admits the factual allegations in Paragraph 59.

60. On or about December 23, 2015, the Department issued a Notice of Proposed Deficiency (the "NPD") for the Tax Years at Issue reporting a total tax deficiency of $6,417,929, exclusive of penalty and interest.

ANSWER: The Department admits the allegations in Paragraph 60.

61. On or about January 20, 2016, the Department issued Information Document Request Number 6 ("IDR 6") requesting extensive additional information regarding FLNA's business activities.

ANSWER: The Department admits that on or about January 20, 2016, it issued to Petitioner an Information Document Request (EDA-70) relating in part to FLNA. The Department denies all other allegations in Paragraph 61.

62. IDR 6 included 18 detailed questions and required Taxpayer to respond within one week.

ANSWER: The Department admits that it issued an Information Document Request on or about January 20, 2016 consisting of eighteen questions and requested a response by January 27, 2016. The Department denies all other allegations in Paragraph 62.

63. On or about January 21, 2016, the day after issuing IDR 6, the auditor issued an IL-870 Waiver of Restrictions, revising the total tax liability to $5,597,711 for the Tax Years at Issue.

ANSWER: The Department admits that on or about January 21, 2016 the auditor issued an IL-870 Waiver of Restrictions evidencing an underlying tax liability, exclusive of penalties and interest, of $5,597,711. The Department denies all other allegations in Paragraph 63.

64. On or about January 22, 2016, the auditor issued a revised EDA-25 Auditor's Report for the Tax Years at Issue.

ANSWER: The Department admits that it issued an EDA-25 on or about January 21, 2016.

65. On January 27, 2016, Taxpayer provided responses to the Department's IDR 6 within the Department's one week deadline.

ANSWER: The Department denies the allegations in Paragraph 65.

66. On January 27, 2016, at the Department's request, Taxpayer signed another IL-872 extending the statute of limitations for Tax Year 2010 and Tax Year 2011 to April 15, 2016.

ANSWER: The Department admits Petitioner signed an IL-872 dated January 27, 2016, which was accepted by the Department by signature dated January 30, 2016, that extended the statute of limitations for Tax Year 2010 and Tax Year 2011 to April 15,

2016. Department denies that the IL-872 dated January 27, 2016 was executed at the request of the Department. Department affirmatively states that it last made a request for a waiver of the statute of limitations for Tax Years 2010 and 2011 on October 16, 2015, when Department's auditor requested Petitioner sign a waiver in the form of an IL-872. However, at that time, Petitioner refused to sign and stated that they wouldn't sign any more waivers.

67. On or about February 18, 2016, the auditor issued a third EDA-25 Auditor's Report for the Tax Years at Issue.

ANSWER: The Department admits the allegation in Paragraph 67.

68. On or about February 18, 2016, the auditor issued a second IL-870 Waiver of Restrictions, revising the total tax liability to $6,452,677 for the Tax Years at Issue.

ANSWER: The Department admits that on or about February 18, 2016 the auditor issued an IL-870 Waiver of Restrictions evidencing an underlying tax liability, exclusive of penalties and interest, of $6,452,677. The Department denies all other allegations in Paragraph 68.

69. The total tax liability reflected on the February 18, 2016 IL-870 matches the aggregate tax deficiency shown on the Notices of Deficiency issued on or about February 29, 2016.

ANSWER: The Department admits the allegations in Paragraph 69.

COUNT I

70. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-69 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 69, as if fully set forth herein.

71. In the 2011 Notice, the Department improperly included FLNA in the 2011 Illinois Combined Return.

ANSWER: The Department denies the allegation in Paragraph 71.

72. The IITA requires members of a unitary business group to file a combined report. 35 ILCS 5/502(e).

ANSWER: Paragraph 72 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the IITA.

73. A unitary business group is defined as "a group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other." 35 ILCS 5/1501(a)(27).

ANSWER: The Department admits that Petitioner has accurately reproduced a portion of 35 ILCS 5/1501(a)(27)(A). The Department denies all other allegations in Paragraph 73.

74. A unitary business group does not include "those members whose business activity outside the United States is 80% or more of any such member's total business activity." (referred to as "80/20 Companies") *Id.*

ANSWER: The Department admits that Petitioner has accurately reproduced a portion of 35 ILCS 5/1501(a)(27)(A). The Department denies all other allegations in Paragraph 74.

75. For purposes of determining the amount of business activity conducted outside the United States, Illinois law requires taxpayers who apportion their income pursuant to IITA Section 304(a) to use the property and payroll factor rules set forth in Section 304(a); the sales factor is ignored for purposes of determining business conducted outside the United States. 86 Ill. Admin. Code 100.9700(c).

ANSWER: Paragraph 75 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute and regulation referred to in Paragraph 75.

76. Illinois' 80/20 Company computation requires taxpayers to compute a property fraction and a payroll fraction, the numerators of which represent U.S. property and payroll, respectively, and the denominators represent world-wide figures. 86 Ill. Admin. Code 100.9700(c)(2)(B).

ANSWER: Paragraph 76 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 86 Ill. Admin. Code 100.9700(c)(2)(B) referred to in Paragraph 76.

77. Illinois respects the federal entity classification rules such that entities that are disregarded for federal income tax purposes are also disregarded for Illinois income tax purposes. 35 ILCS 5/403(a); 35 ILCS 5/1501(a)(4).

ANSWER: Paragraph 77 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statutes referred to in Paragraph 77.

78. Global Mobility, a single member LLC, is disregarded for federal income tax purposes.

ANSWER: Paragraph 78 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 78.

79. Global Mobility is treated as a division of FLNA, its single member, for federal income tax purposes.

ANSWER: Paragraph 79 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 79.

80. Global Mobility's property and payroll factors are considered the property and payroll factors of FLNA, its sole member, for purposes of Illinois' 80/20 Company computation.

ANSWER: Paragraph 80 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department lacks sufficient knowledge to either admit or deny the allegation in Paragraph 80 and demands strict proof thereof.

81. FLNA apportions its income pursuant to IITA Section 304(a).

ANSWER: Paragraph 81 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 81.

82. More than 80% of FLNA's business activity, measured by FLNA's property and payroll, is outside the United States during the Tax Years at Issue.

ANSWER: The Department denies the allegations in Paragraph 81.

83. Illinois law prohibits the inclusion of FLNA in PepsiCo's 2011 Illinois Combined Return.

ANSWER: Paragraph 83 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 83.

84. The Department's inclusion of FLNA in PepsiCo's 2011 Illinois Combined Return is in error.

ANSWER: The Department denies the allegation in Paragraph 84.

85. The Department made a variety of additional adjustments related to the inclusion of FLNA in the 2011 Illinois Combined Return, all of which must similarly be reversed.

ANSWER: The phrase "a variety of additional adjustments" is vague and ambiguous. Therefore, the Department denies the allegations in Paragraph 85.

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

a. finding that FLNA failed to show by clear and cogent evidence that it met the 80/20 business activity test;

b. finding the inclusion of FLNA in the 2011 Illinois combined return was proper;

c. holding that the Notices of Deficiency are correct as issued;

d. ordering judgment in favor of Department and against Petitioner; and

e. granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

86. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-85 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 85, as if fully set forth herein.

87. In the 2010 Notice, the Department improperly added back intangible expenses of Woodlands not included in the 2010 Illinois Combined Return.

ANSWER: Paragraph 87 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 87.

88. Illinois's corporate income tax is imposed on "net income." 35 ILCS 5/201(a).

ANSWER: Paragraph 88 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 88.

89. Net income is defined as "that portion of [its] base income for such year which is allocable to this State under the provisions of Article 3 …." 35 ILCS 5/202.

ANSWER: Paragraph 89 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits that Petitioner has accurately reproduced a portion of 35 ILCS 5/202. The statute speaks for itself.

90. Base income, for corporate income tax purposes, is the taxpayer's taxable income for the year as modified by Illinois law. 35 ILCS 5/203(b)(1).

ANSWER: Paragraph 90 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force and effect of the statute cited in Paragraph 90.

91. A taxpayer's taxable income is its federal taxable income. 35 ILCS 5/403(a).

ANSWER: Paragraph 91 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, Petitioner has oversimplified 35 ILCS 5/403(a) as alleged in Paragraph 91; the Department therefore denies all allegations in Paragraph 91.

92. A combined group computes combined base income "by first computing the combined group's combined taxable income and then modifying this amount by the combined group's Illinois addition and subtraction modifications". 86 Ill. Admin. Code 100.5270(a).

ANSWER: Paragraph 92 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits that Petitioner has accurately reproduced a portion of 86 Ill. Admin. Code 100.5270(a). The regulation speaks for itself.

93. The IITA requires taxpayers to add back to taxable income certain identified related party expenses. 35 ILCS 5/203(b)(2).

ANSWER: Paragraph 93 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an

answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 93.

94. This adjustment is required for intangible expenses paid to a person who qualifies as an 80/20 Company or who is not included in the combined group because it apportions its income under a different rule in IITA Section 304 (a "Noncombination Company"). 35 ILCS 5/203(b)(2)(E-13).

ANSWER: Paragraph 94 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 94.

95. Entities that qualify as Noncombination Companies include insurance companies, financial organizations, and transportation companies. 35 ILCS 5/304(b), (c), and (d).

ANSWER: Paragraph 95 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 95.

96. In 2010, Woodlands was eliminated.

ANSWER: Paragraph 96 in its entirety is vague and ambiguous. The Department therefore denies all allegations in Paragraph 96.

97. In 2010, prior to elimination, Woodlands transferred its insurance liabilities to Mountainview.

ANSWER: The phrase “prior to elimination” is vague and ambiguous. Department lacks sufficient information to either admit or deny the allegations in Paragraph 97.

98. Woodlands paid Mountainview for the novation of these insurance liabilities (the "Novation Consideration").

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 98 and demands strict proof thereof.

99. Woodlands qualifies as a Noncombination Company.

ANSWER: Paragraph 99 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 99.

100. Mountainview qualifies as a Noncombination Company.

ANSWER: Paragraph 100 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 100.

101. Woodlands and Mountainview were excluded from the 2010 Illinois Combined Return.

ANSWER: The Department admits the allegation in Paragraph 101.

102. The Novation Consideration was not included in 2010 Illinois combined group taxable income.

ANSWER: Upon information and belief, the Department admits the allegation in Paragraph 102.

103. The auditor's inclusion of the Novation Consideration in Taxpayer's 2010 Illinois combined group taxable income is improper and must be reversed.

ANSWER: Paragraph 103 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 103.

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

a. finding that the 2010 intangible addback adjustment was proper;

b. holding that the Notices of Deficiency are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

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

COUNT III

104. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-103 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 103, as if fully set forth herein.

105. In the 2010 and 2011 Notices, the Department's addback of interest expense paid by PepsiCo to Pepsi PR is in error.

ANSWER: Paragraph 105 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 105.

106. The IITA requires taxpayers to add back to taxable income certain identified related party expenses. 35 ILCS 5/203(b)(2).

ANSWER: Paragraph 106 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 106.

107. This adjustment is required for interest paid to a person who qualifies as an 80/20 Company. 35 ILCS 5/203(b)(2)(E-12).

ANSWER: Paragraph 107 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 107.

108. In Section 203(b)(2)(E-12), the IITA provides several exceptions to the addback requirement, including but not limited to:

a. When the interest is paid to an entity subject to a tax measured by net income in a foreign country;

b. When interest is paid pursuant to an agreement entered into at arm's-length rates and terms and the principal purpose for the payment is not federal or Illinois tax avoidance; or

c. If the addback modification is unreasonable.

ANSWER: Paragraph 108, including sub-sections (a) through (c), contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 108.

109. The Department erroneously adjusted the addition modification by not allowing one or more exceptions to which PepsiCo qualifies.

ANSWER: Paragraph 109 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 109.

110. In 2010, PepsiCo paid $14,599,352 in interest to Pepsi PR pursuant to an arm's-length debt agreement (the "Debt Agreement").

ANSWER: Department admits that in 2010 Pepsi PR reported that it received interest income of $14,599,352. The term “arm’s length debt agreement” is undefined – it does not provide the name, date, or parties to the alleged agreement - and therefore, the allegation in Paragraph 110 is vague and ambiguous; thus, the Department denies the remaining allegations in Paragraph 110 and demands strict proof thereof.

111. In 2011, PepsiCo paid $16,142,001 in interest to Pepsi PR pursuant to the Debt Agreement.

ANSWER: Department admits that in 2011 Pepsi PR reported that it received interest income of $16,142,001. The term “Debt Agreement” is undefined– it does not provide the name, date, or parties to the alleged agreement - and therefore, the allegation in Paragraph 111 is vague and ambiguous; thus, the Department denies the remaining allegations in Paragraph 111 and demands strict proof thereof.

112. Pepsi PR qualifies as an 80/20 Company.

ANSWER: Paragraph 112 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

113. Pepsi PR had property and payroll in Puerto Rico in the Years at Issue.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 113 and demands strict proof thereof.

114. Puerto Rico had jurisdiction to subject Pepsi PR to a tax on net income in each of the Years at Issue.

ANSWER: Paragraph 114 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

115. Interest paid to Pepsi PR satisfies the subject-to-tax exception to addback provided in IITA Section 203(b)(2)(E-12)(i).

ANSWER: Paragraph 115 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 115 and denies any factual allegation in Paragraph 115.

116. PepsiCo's interest paid to Pepsi PR in the Years at Issue was the result of the intercompany Debt Agreement.

ANSWER: The term "Debt Agreement" is undefined – it does not provide the name, date, or parties to the alleged agreement - and therefore, the allegation in Paragraph 116 is vague and ambiguous. The Department denies the allegations in Paragraph 116 and demands strict proof thereof.

117. The terms of the Debt Agreement were entered into at arm's length.

ANSWER: The term "Debt Agreement" is undefined– it does not provide the name, date, or parties to the alleged agreement - and therefore, the allegation in Paragraph 117 is vague and ambiguous. The Department denies the allegation in Paragraph 117 and demands strict proof thereof.

118. The principal purpose of the Debt Agreement was not federal or Illinois tax avoidance.

ANSWER: Paragraph 118 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 118.

119. Interest paid to Pepsi PR in the Years at Issue satisfies the arm's length exception to addback provided in IITA Section 203(b)(2)(E-12)(iii).

ANSWER: Paragraph 119 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 119.

120. Addback of the interest expense in the Years at Issue is unreasonable.

ANSWER: Paragraph 120 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 120.

121. Interest paid to Pepsi PR in the Years at Issue satisfies the unreasonable exception to addback provided in IITA Section 203(b)(2)(E-12)(iv).

ANSWER: Paragraph 121 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 121.

122. Addback of PepsiCo's interest expense paid to Pepsi PR is improper.

ANSWER: Paragraph 122 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 122.

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

a. finding the 2011 adjustment with respect to the addback of interest expense paid to Pepsi PR was proper;

b. holding that the Notices of Deficiency are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

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

COUNT IV

123. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-122 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 122, as if fully set forth herein.

124. The Department improperly disallowed the Taxpayer's election to subtract insurance losses incurred by its captive insurance provider as allowed under IITA Section 203(b)(2)(Y) in Tax Year 2011.

ANSWER: Paragraph 124 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 124.

125. Illinois law requires the addback of insurance premiums paid to a person who would be a member of the Illinois unitary business group but for the Noncombination Company rule. 35 ILCS 5/203(b)(2)(E-14).

ANSWER: Paragraph 125 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 125.

126. Beginning with Tax Year 2011, Illinois law provides a subtraction modification for reimbursements received from a captive insurance company "equal to the amount of the expense or loss (including expenses incurred by the insurance company) that would have

been taken into account as a deduction for federal income tax purposes if the expense or loss had been uninsured." 35 ILCS 5/203(b)(2)(Y).

ANSWER: Paragraph 126 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 126.

127. In Tax Year 2011, the PepsiCo group added back premium expense paid to Mountainview as required by IITA Section 203(b)(2)(E-14).

ANSWER: Upon information and belief, the Department admits that in 2011, PepsiCo group reported premium expenses paid to Mountainview in its Related Party expenses additions on Line 6 of Form IL-1120. The remaining allegations in Paragraph 127 are legal conclusions and therefore do not require an Answer pursuant to Rule 310(b)(2).

128. In Tax Year 2011, Mountainview incurred insurance losses on insured PepsiCo group claims.

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

129. The Taxpayer would have deducted those insurance losses on its federal return had it not been insured.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 129 and demands strict proof thereof.

130. In Tax Year 2011, Taxpayer made an election under IITA Section 203(b)(2)(Y) to deduct from group income the insurance losses incurred by Mountainview with respect to PepsiCo group claims.

ANSWER: Upon information and belief, the Department admits that for 2011, Taxpayer reported insurance losses incurred by Mountainview on Line 19 of Form IL-1120. The remaining allegations in Paragraph 130 are legal conclusions and therefore do not require an Answer pursuant to Rule 310(b)(2).

131. The Department's disallowance of Taxpayer's election under IITA Section 203(b)(2)(Y) is improper.

ANSWER: Paragraph 131 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 131.

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

a. finding that Taxpayer was not allowed a subtraction modification for the Mountainview losses;

b. holding that the Notices of Deficiency are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

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

COUNT V

132. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-131 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 131, as if fully set forth herein.

133. In the 2010 and 2011 Notices, the Department erroneously excluded service income of Domestic Service Providers received from CMCI from the sales factor denominator.

ANSWER: Paragraph 133 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 133.

134. Domestic Service Providers receive service fee income from CMCI for services provided to CMCI (the "Service Fees").

ANSWER: The term “Domestic Services Providers” is defined in such a way as to be vague and ambiguous because the entities included therein are not defined. The term “service fee income” is also vague and ambiguous because it is undefined. Therefore, the Department lacks sufficient knowledge to either admit or deny that CMCI paid for the services it received pursuant to the Advertising and Marking Services Agreement effective February 23, 2003 between CMCI and Pepsi-Cola Advertising and Marking, Inc.; Research and Development Services Agreement effective December 28, 2003 between CMCI and QTG Development Company; Research and Development Services Agreement effective February 23, 2003 between CMCI and Pepsi-Cola Technical Operations, Inc.; Management Services Agreement effective February 23, 2003 between CMCI and Pepsi-Cola Management and Administrative Services, Inc.; or Management, Advertising and Marketing Services Agreement effective December 28, 2003 between CMCI and The Gatorade Company. The Department denies the remaining allegations in Paragraph 134 and demands strict proof thereof.

135. The Service Fees are included in the combined group's base income.

ANSWER: The term “Service Fees” is defined in such a way that it is vague and ambiguous. Department admits that some amount of service fee income was included in the base income of Taxpayer’s combined return in 2010 and 2011. Department lacks

sufficient knowledge to either admit or deny the remaining allegations in Paragraph 135 and demands strict proof thereof.

136. Illinois apportionment rules require receipts included in base income to also be included in the denominator of the sales factor. 86 Ill. Admin. Code 100.3370(a)(2)(B).

ANSWER: Paragraph 136 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the regulation referred to in Paragraph 136.

137. Illinois apportionment rules also define "sales" to include "fees, commissions, and similar items." 86 Ill. Admin. Code 100.3370(a)(1)(C).

ANSWER: Paragraph 137 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the regulation referred to in Paragraph 137.

138. The Service Fees must be included in the denominator of Taxpayer's apportionment factor.

ANSWER: Paragraph 138 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 138.

139. The Department's exclusion the Service Fees from the denominator of Taxpayer's apportionment factor is improper.

ANSWER: The Department denies the allegation in Paragraph 139.

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

a. finding the 2010 and 2011 exclusion from the sales factor denominator of the

service fee income paid by CMCI was proper;

b. holding that the Notices of Deficiency are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

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

COUNT VI

140. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-139 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 139, as if fully set forth herein.

141. In the 2010 and 2011 Notices, the Department erroneously included in the numerator of PepsiCo's Illinois apportionment factor sales of Quaker Sales & Distribution, Inc. ("QSDI") made to states in which QSDI was taxable.

ANSWER: The Department denies the allegation in Paragraph 141.

142. In computing the Illinois apportionment factor, the IITA requires taxpayers making sales of tangible personal property to include in the sales factor numerator, *i.e.*, throw back, receipts associated with property that is "shipped from an office, store, warehouse, factory or other place of storage [in Illinois] and … the person is not taxable in the state of the purchaser." 35 ILCS 5/304(a)(3)(B)(ii).

ANSWER: Paragraph 142 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 142.

143. A taxpayer is "taxable" in another state if it is (a) subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or (b) another state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does subject the taxpayer to such a tax. 86 Ill. Admin. Code 100.3200(a)(1).

ANSWER: Paragraph 143 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the regulation referred to in Paragraph 143.

144. In Tax Years 2010 and 2011, the Department increased PepsiCo's Illinois sales factor numerator by including sales made to a variety of states where QSDI either filed franchise tax returns for the privilege of doing business, or was subject to tax on a net income basis, but a corporate net income tax was not imposed.

ANSWER: The phrase “a variety of states” is vague; the Department therefore denies the allegations in Paragraph 144.

145. The Department's adjustments to PepsiCo's Illinois sales factor numerator are improper to the extent Taxpayer filed franchise tax returns for the privilege of doing business or was subject to tax on a net income basis in states where a corporate income tax was not imposed.

ANSWER: The Department denies the allegation in Paragraph 145.

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

a. finding the 2010 and 2011 addback of sales was proper;

b. holding that the Notices of Deficiency are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

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

COUNT VII

146. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-145 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 145, as if fully set forth herein.

147. In the Tax Years at Issue, QSDI's sales made to Nevada and Washington were included in the numerator of its Illinois sales factor on its originally filed returns.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 147 and demands strict proof thereof.

148. Nevada does not impose a corporate net income tax.

ANSWER: Paragraph 148 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department lacks sufficient knowledge to either admit or deny the allegation in Paragraph 148.

149. Washington does not impose a corporate net income tax.

ANSWER: Paragraph 149 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department lacks sufficient knowledge to either admit or deny the allegation in Paragraph 149.

150. QSDI had property and payroll in Nevada during the Years at Issue.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 150 and demands strict proof thereof.

151. Nevada had jurisdiction to subject QSDI to a tax on net income.

ANSWER: Paragraph 151 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 151.

152. QSDI had property and payroll in Washington during the Years at Issue.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 152 and demands strict proof thereof.

153. Washington had jurisdiction to subject QSDI to a tax on net income.

ANSWER: Paragraph 153 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 153.

154. Inclusion of sales made to Nevada and Washington in the numerator of PepsiCo's Illinois sales factor is improper.

ANSWER: Paragraph 154 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 154.

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

a. finding the 2010 and 2011 inclusion of sales to Nevada and Washington in PepsiCo’s Illinois sales factor numerator was proper;

b. holding that the Notices of Deficiency are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

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

COUNT VIII

155. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-154 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 154, as if fully set forth herein.

156. In the 2010 Notice, the Department underreported the post-audit PAS Illinois Net Loss Deduction available to the PepsiCo combined group.

ANSWER: The Department denies the allegation in Paragraph 156.

157. PAS was purchased by PepsiCo in February, 2010.

ANSWER: The Department admits the allegation in Paragraph 157.

158. PAS was separately under Illinois audit with respect to Tax Year 2009 and short-period 2010 (the "PAS Prior Audit").

ANSWER: The Department admits the factual allegations in Paragraph 158.

159. At the close of the PAS Prior Audit, PAS was determined to have $813,976 of Illinois Net Loss Deduction available.

ANSWER: The Department denies the allegations in Paragraph 159 and demands strict proof thereof.

160. PAS was included in the PepsiCo combined group from the date of purchase through December 31, 2010.

ANSWER: The Department admits the factual allegations in Paragraph 160.

161. The PAS post-audit Illinois Net Loss Deduction of $813,976 was available for use in the PepsiCo 2010 Illinois Combined Return. 86 Ill. Admin. Code § 100.5270(b)(3).

ANSWER: Paragraph 161 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 161.

162. The Department improperly limited PAS' Illinois Net Loss to $778,005.

ANSWER: The Department denies the allegation in Paragraph 162.

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

a. finding the amount of the 2010 Illinois Net Loss Deduction allowed by the Department is correct;

b. holding that the Notices of Deficiency are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

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

COUNT IX

163. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-162 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 162 as if fully set forth herein.

164. The Department is charging penalty and interest on amounts the Taxpayer has already paid the Department in satisfaction of pre-audit adjustments to the 2010 Illinois Combined Return.

ANSWER: The Department denies the allegation in Paragraph 164.

165. The Department disallowed the PAS Illinois Net Loss Deduction originally claimed on the 2010 Illinois Combined Return.

ANSWER: The Department admits that prior to its audit of Taxpayer, the Department adjusted PAS's Illinois Net Loss Deduction claimed in 2010 to $0. However, during the audit, but before the audit adjustments were processed, the Department received sufficient proof of PAS's Net Loss Deduction for 2010 and therefore reinstated the Net Loss Deduction and applied the resulting overpayment as a credit carryforward as Taxpayer requested on its original return.

166. As a result, PepsiCo's 2010 Illinois Combined Return showed an additional corresponding tax due of $854,966.

ANSWER: The Department denies the allegations in Paragraph 166 and demands strict proof thereof.

167. The Department offset PepsiCo's 2010 overpayment by $854,966.

ANSWER: The Department denies the allegations in Paragraph 167 and demands strict proof thereof.

168. After offset, the Taxpayer's total Net Income and Replacement Tax due, and satisfied, for Tax Year 2010 was $5,350,035.

ANSWER: The Department denies the allegations in Paragraph 168 and demands strict proof thereof.

169. The Department's audit results restored the originally claimed PAS Illinois Net Loss Deduction in the 2010 Illinois Combined Return.

ANSWER: The Department denies the allegations in Paragraph 169 and demands strict proof thereof.

170. The Department's computation fails to account for PepsiCo's payment of additional tax of $854,966 in Tax Year 2010.

ANSWER: The Department denies the allegation in Paragraph 170.

171. The Department is asserting penalty and interest on the $854,966 in additional tax PepsiCo already paid.

ANSWER: The Department denies the allegation in Paragraph 171.

172. The Department has classified the $854,966 payment via offset as available for refund with respect to Tax Year 2013. See attached Exhibit D - Taxpayer Statement, dated February 2, 2016.

ANSWER: The Department denies the allegation in Paragraph 172.

173. As the $854,966 was paid with respect to 2010, that refund should apply to offset Tax Year 2010 liability.

ANSWER: The Department denies the allegation in Paragraph 173.

174. The Department improperly seeks interest and penalty on amounts already received.

ANSWER: The Department denies the allegation in Paragraph 174.

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

a. finding the Department’s penalty and interest calculation for 2010 is correct;

b. holding that the Notices of Deficiency are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

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

COUNT X

175. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-174 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 174 as if fully set forth herein.

176. Any penalties assessed must be abated for reasonable cause.

ANSWER: Paragraph 176 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 176.

177. The Department has assessed late payment penalties in the 2010 Notice.

ANSWER: The Department admits that, pursuant to statute, it assessed a $351,188.20 late payment penalty for the 2010 tax year.

178. The Department has assessed late payment penalties in the 2011 Notice.

ANSWER: The Department admits that, pursuant to statute, it assessed a $939,347.20 late payment penalty for the 2011 tax year.

179. Under Illinois law, no penalties shall be imposed on a taxpayer if his failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 179 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the statute referred to in Paragraph 179.

180. Under Illinois regulations, "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 his property tax liability and to file and pay his proper liability in a timely fashion." 86 Ill. Admin. Code § 700.400(b).

ANSWER: Paragraph 180 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits that Petitioner has accurately reproduced a portion of 86 Ill. Admin. Code § 700.400(b); the regulation speaks for itself.

181. A taxpayer's filing history is also considered in determining whether the taxpayer acted in good faith. 86 Ill. Admin. Code §700.400(d).

ANSWER: Paragraph 181 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits that Petitioner has accurately reproduced a portion of 86 Ill. Admin. Code § 700.400(d); the regulation speaks for itself.

182. PepsiCo made a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion.

ANSWER: Paragraph 182 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 182 and demands strict proof thereof.

183. PepsiCo exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper tax liability in a timely fashion.

ANSWER: Paragraph 183 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an

answer is required, the Department denies the allegations in Paragraph 183 and demands strict proof thereof.

184. PepsiCo has a history of timely filing Illinois corporate income tax returns and paying Illinois corporate income tax in a timely manner.

ANSWER: Department denies the allegations in Paragraph 184 and demands strict proof thereof.

185. The late payment penalties imposed by the Department must be abated for reasonable cause.

ANSWER: Paragraph 185 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 185.

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

a. finding that Petitioner did not exercise reasonable cause in its failure to timely pay the tax assessed by the Department;

b. finding that the Notices of Deficiency are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

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

Respectfully Submitted,

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Dated: Wednesday, July 06, 2016

ILLINOIS INDEPENDENT TAX TRIBUNAL

PEPSICO INC. AND AFFILIATES,	)	
	)	
Petitioner,	)	
	)	Case No. 16-TT-82
v.	)	
	)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	

AFFIDAVIT OF GARIE LOVE
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

STATE OF NEW YORK

COUNTY OF WESTCHESTER

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Garie Love, 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.
3. I reviewed Taxpayer's Illinois Corporate Income and Replacement Tax Returns for the tax years ending December 31, 2010 and December 31, 2011.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 18-21, 23, 25-29, 37, 39, 46-50, 52, 78-80, 97, 98, 113, 129, 134, 135, 147-150, 152.
5. I am an adult resident of the State of New York 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.

Garie Love

Date: 07/06/2016

Garie Love
Revenue Auditor
Illinois Department of Revenue

ILLINOIS INDEPENDENT TAX TRIBUNAL

PEPSICO INC. AND AFFILIATES,	)	
	)	
Petitioner,	)	
	)	Case No. 16-TT-82
v.	)	
	)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	

NOTICE OF FILING

TO: Mr. Theodore R. Bots
Mr. Matthew S. Mock
Ms. Julie S. Townsley
Baker & McKenzie LLP
300 E. Randolph Street #5000
Chicago, IL 60601
(312) 861-8000
theodore.bots@bakermckenzie.com
matthew.mock@bakermckenzie.com
julie.townsley@bakermckenzie.com

PLEASE TAKE NOTICE that on July 6, 2016, Respondent filed by e-mail with the Illinois Independent Tax Tribunal, located at 160 N. LaSalle Street Room N506, Chicago, Illinois 60601, the Respondent's **ANSWER** in the above captioned matter.

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

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

Dated: July 6, 2016

ILLINOIS INDEPENDENT TAX TRIBUNAL

PEPSICO INC. AND AFFILIATES,	)	
	)	
Petitioner,	)	
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v.	)	
	)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

Jonathan M. Pope certifies that he is a Special Assistant Attorney General of the State of Illinois duly appointed by Lisa Madigan, Attorney General of the State of Illinois; that he is authorized to make this certificate; that on July 6, 2016, before the hour of 5:00 p.m. (C.S.T.) he served a true and exact copy of the foregoing instrument entitled **ANSWER** on Petitioner by sending the same as an attachment to an e-mail message addressed to Petitioner at one of its designated e-mail addresses:

Ms. Julie S. Townsley: julie.townsley@bakermckenzie.com

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

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

Dated: July 6, 2016