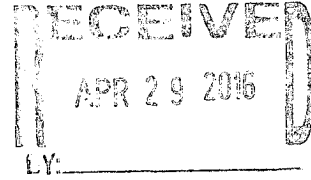


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

PEPSICO INC. AND AFFILIATES,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE)
)
 Respondent.)

Case No. _____



16TT82

PETITION

Petitioner, PepsiCo, Inc. ("PepsiCo" or "Taxpayer"), individually and on behalf of its unitary subsidiaries, by and through its attorneys , Baker & McKenzie LLP, who are duly authorized to represent Petitioner in this regard pursuant to the Power of Attorney attached hereto as Exhibit A, hereby complains of Respondent, Illinois Department of Revenue ("Respondent" or "Department"), as follows:

PARTIES

1. PepsiCo is a publicly-traded corporation duly organized and existing under the laws of the state 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.
3. PepsiCo's tax identification number is 13-1584302.
4. The Department is an agency of the state of Illinois responsible for administering and enforcing the revenue laws of the state of Illinois.

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.

6. The 2010 Notice imposed \$351,188.20 in late-payment penalty.
7. The 2010 Notice imposed \$217,428.20 in interest as of February 29, 2016.
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.
9. The 2011 Notice imposed \$939,347.20 in late-payment penalty.
10. The 2011 Notice imposed \$417,293.06 in interest as of February 29, 2016.
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.
12. The Notices of Deficiency amount to \$6,452,677 of tax deficiency in the aggregate, exclusive of penalty and interest.
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.

BACKGROUND

14. PepsiCo is a global food and beverage company.

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.

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").
17. Also on or about February 26, 2010, PepsiCo purchased PepsiAmericas, Inc. ("PAS") and affiliated entities.
18. PBG and PAS were the two largest independent bottlers of Pepsi products prior to their acquisition by PepsiCo.
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.
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.
21. In order to integrate the new entities, PepsiCo undertook a global restructuring of the acquired bottling operations.
22. PepsiCo consolidated certain foreign operations under Frito-Lay North America, Inc. ("FLNA").
23. PepsiCo formed Global Mobility LLC as a single member LLC owned by FLNA to hold foreign-based U.S. expatriates.

24. These foreign-based U.S. expatriates perform services overseas for a variety of PepsiCo businesses.
25. Global Mobility LLC is treated as a branch of FLNA for federal tax purposes.
26. Approximately 32 of the acquired domestic entities, as well as several PepsiCo holding companies, were eliminated as part of the restructuring, including Woodlands.

Captive Insurance Arrangements

27. Woodlands was a captive insurance company within the PBG group of affiliated entities.
28. Woodlands insured certain PBG group risks, including property and casualty risks, in exchange for premiums.
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.

Service Fee Income

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

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").
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.
35. More than 80% of FLNA's business activity, property and payroll, is outside the United States.
36. FLNA was properly excluded from PepsiCo's 2010 and 2011 Illinois Combined Returns.
37. More than 80% of CMCI's business activity, property and payroll, was outside the United States.
38. CMCI was properly excluded from PepsiCo's 2010 and 2011 Illinois Combined Returns.
39. More than 80% of PepsiCo Puerto Rico, Inc.'s ("Pepsi PR") business activity, property and payroll, is outside the United States.
40. Pepsi PR was properly excluded from PepsiCo's 2010 and 2011 Illinois Combined Returns.
41. IITA Section 1501(a)(27) prohibits the inclusion of insurance companies in an Illinois Combined Return with non-insurance company affiliates.
42. Mountainview is an insurance company.

43. Mountainview was properly excluded from PepsiCo's 2010 and 2011 Illinois Combined Returns.
44. Woodlands is an insurance company.
45. Woodlands was properly excluded from PepsiCo's 2010 and 2011 Illinois Combined Returns.
46. FLNA does not own or maintain property or payroll in Illinois.
47. CMCI does not own or maintain property or payroll in Illinois.
48. Pepsi PR does not own or maintain property or payroll in Illinois.
49. Mountainview does not own or maintain property or payroll in Illinois.
50. Woodlands did not own or maintain property or payroll in Illinois.
51. FLNA, CMCI, Pepsi PR, Mountainview, and Woodlands did not file separate Illinois tax returns for the Tax Years at Issue.
52. FLNA, CMCI, Pepsi PR, Mountainview, and Woodlands were not required to file separate Illinois tax returns for the Tax Years at Issue.

PROCEDURAL HISTORY

53. On or about April 2, 2014, the Department initiated the audit of the Tax Years at Issue.
54. As of April 2, 2014, there were approximately six months left in the three year statute of limitations applicable to Tax Year 2010.
55. As of April 2, 2014, there were approximately 18 months left in the three year statute of limitations applicable to Tax Year 2011.
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.

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.
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.
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.
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.
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.
62. IDR 6 included 18 detailed questions and required Taxpayer to respond within one week.
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.
64. On or about January 22, 2016, the auditor issued a revised EDA-25 Auditor's Report for the Tax Years at Issue.

65. On January 27, 2016, Taxpayer provided responses to the Department's IDR 6 within the Department's one week deadline.
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.
67. On or about February 18, 2016, the auditor issued a third EDA-25 Auditor's Report for the Tax Years at Issue.
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.
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.

COUNT I

THE INCLUSION OF FLNA IN PEPSICO'S 2011 ILLINOIS COMBINED GROUP IS IMPROPER

70. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-69 as if fully set forth herein.
71. In the 2011 Notice, the Department improperly included FLNA in the 2011 Illinois Combined Return.
72. The IITA requires members of a unitary business group to file a combined report. 35 ILCS 5/502(e).
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).

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.*
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).
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).
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).
78. Global Mobility, a single member LLC, is disregarded for federal income tax purposes.
79. Global Mobility is treated as a division of FLNA, its single member, for federal income tax purposes.
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.
81. FLNA apportions its income pursuant to IITA Section 304(a).

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

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining that the Department's inclusion of FLNA in the 2011 Illinois Combined Return is improper and the Department's assessments with respect to this issue, along with any penalties and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT II

THE ADDBACK OF RELATED PARTY INTANGIBLE EXPENSES IS IMPROPER

86. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-85 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.
88. Illinois's corporate income tax is imposed on "net income." 35 ILCS 5/201(a).
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.

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).
91. A taxpayer's taxable income is its federal taxable income. 35 ILCS 5/403(a).
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).
93. The IITA requires taxpayers to add back to taxable income certain identified related party expenses. 35 ILCS 5/203(b)(2).
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).
95. Entities that qualify as Noncombination Companies include insurance companies, financial organizations, and transportation companies. 35 ILCS 5/304(b), (c), and (d).
96. In 2010, Woodlands was eliminated.
97. In 2010, prior to elimination, Woodlands transferred its insurance liabilities to Mountainview.
98. Woodlands paid Mountainview for the novation of these insurance liabilities (the "Novation Consideration").
99. Woodlands qualifies as a Noncombination Company.
100. Mountainview qualifies as a Noncombination Company.
101. Woodlands and Mountainview were excluded from the 2010 Illinois Combined Return.

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

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

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the 2010 intangible addback adjustment improper and the Department's assessment with respect to this issue, along with penalty and interest, be abated in its entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT III

INTEREST EXPENSE ADDBACK IS IMPROPER

104. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-103 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.

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

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).

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.
109. The Department erroneously adjusted the addition modification by not allowing one or more exceptions to which PepsiCo qualifies.
 110. In 2010, PepsiCo paid \$14,599,352 in interest to Pepsi PR pursuant to an arm's-length debt agreement (the "Debt Agreement").
 111. In 2011, PepsiCo paid \$16,142,001 in interest to Pepsi PR pursuant to the Debt Agreement.
 112. Pepsi PR qualifies as an 80/20 Company.
 113. Pepsi PR had property and payroll in Puerto Rico in the Years at Issue.
 114. Puerto Rico had jurisdiction to subject Pepsi PR to a tax on net income in each of the Years at Issue.
 115. Interest paid to Pepsi PR satisfies the subject-to-tax exception to addback provided in IITA Section 203(b)(2)(E-12)(i).
 116. PepsiCo's interest paid to Pepsi PR in the Years at Issue was the result of the intercompany Debt Agreement.
 117. The terms of the Debt Agreement were entered into at arm's length.
 118. The principal purpose of the Debt Agreement was not federal or Illinois tax avoidance.
 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).
 120. Addback of the interest expense in the Years at Issue is unreasonable.

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

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the 2011 adjustment with respect to the addback of interest expense paid to Pepsi PR improper and the Department's assessment with respect to this issue, along with penalty and interest, be abated in its entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT IV

DENIAL OF ELECTION TO SUBTRACT LOSS REIMBURSEMENT RECEIVED FROM CAPTIVE INSURANCE PROVIDER IS IMPROPER

123. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-122 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.
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).
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).

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).
128. In Tax Year 2011, Mountainview incurred insurance losses on insured PepsiCo group claims.
129. The Taxpayer would have deducted those insurance losses on its federal return had it not been insured.
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.
131. The Department's disallowance of Taxpayer's election under IITA Section 203(b)(2)(Y) is improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the 2011 adjustment with respect to the addback of Mountainview losses improper and the Department's assessment with respect to this issue, along with penalty and interest, must be abated in its entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT V

EXCLUSION OF SERVICE FEE INCOME FROM SALES FACTOR DENOMINATOR IS IMPROPER

132. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-131 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.

134. Domestic Service Providers receive service fee income from CMCI for services provided to CMCI (the "Service Fees").
135. The Service Fees are included in the combined group's base income.
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).
137. Illinois apportionment rules also define "sales" to include "fees, commissions, and similar items." 86 Ill. Admin. Code 100.3370(a)(1)(C).
138. The Service Fees must be included in the denominator of Taxpayer's apportionment factor.
139. The Department's exclusion the Service Fees from the denominator of Taxpayer's apportionment factor is improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the 2010 and 2011 exclusion of the Service Fees from the sales factor denominator improper and the Department's assessments with respect to this issue, along with penalty and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT VI

SALES THROWBACK IS IMPROPER

140. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-139 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.
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).
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).
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.
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.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the 2010 and 2011 addback of sales made to states where Taxpayer was taxable is improper and the

Department's assessments with respect to this issue, along with penalty and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT VII

INCLUSION OF SALES MADE TO WASHINGTON AND NEVADA IN PEPSICO'S SALES FACTOR NUMERATOR IS IMPROPER

146. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-145 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.
148. Nevada does not impose a corporate net income tax.
149. Washington does not impose a corporate net income tax.
150. QSDI had property and payroll in Nevada during the Years at Issue.
151. Nevada had jurisdiction to subject QSDI to a tax on net income.
152. QSDI had property and payroll in Washington during the Years at Issue.
153. Washington had jurisdiction to subject QSDI to a tax on net income.
154. Inclusion of sales made to Nevada and Washington in the numerator of PepsiCo's Illinois sales factor is improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the inclusion of sales to Nevada and Washington in PepsiCo's Illinois sales factor numerator was improper for Tax Years 2010 and 2011 and adjust PepsiCo's Illinois tax liabilities accordingly, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT VIII

THE AMOUNT OF THE PEPSIAMERICAS ILLINOIS NET LOSS DEDUCTION ALLOWED IS INCORRECT

155. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-154 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.
157. PAS was purchased by PepsiCo in February, 2010.
158. PAS was separately under Illinois audit with respect to Tax Year 2009 and short-period 2010 (the "PAS Prior Audit").
159. At the close of the PAS Prior Audit, PAS was determined to have \$813,976 of Illinois Net Loss Deduction available.
160. PAS was included in the PepsiCo combined group from the date of purchase through December 31, 2010.
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).
162. The Department improperly limited PAS' Illinois Net Loss to \$778,005.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the 2010 Illinois Net Loss Deduction used by the PepsiCo combined group was \$813,976 and the Department's assessments with respect to this issue, along with penalty and interest, must be abated, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT IX

THE PENALTY AND INTEREST COMPUTATION FOR TAX YEAR 2010 IS IMPROPER

163. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-162 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.
165. The Department disallowed the PAS Illinois Net Loss Deduction originally claimed on the 2010 Illinois Combined Return.
166. As a result, PepsiCo's 2010 Illinois Combined Return showed an additional corresponding tax due of \$854,966.
167. The Department offset PepsiCo's 2010 overpayment by \$854,966.
168. After offset, the Taxpayer's total Net Income and Replacement Tax due, and satisfied, for Tax Year 2010 was \$5,350,035.
169. The Department's audit results restored the originally claimed PAS Illinois Net Loss Deduction in the 2010 Illinois Combined Return.
170. The Department's computation fails to account for PepsiCo's payment of additional tax of \$854,966 in Tax Year 2010.
171. The Department is asserting penalty and interest on the \$854,966 in additional tax PepsiCo already paid.
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.

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

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

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order requiring the \$854,966 of refund currently assigned to Tax Year 2013 apply to offset Tax Year 2010 liability, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT X

IMPOSITION OF PENALTIES IS IMPROPER

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

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

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

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

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.

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).

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).

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.

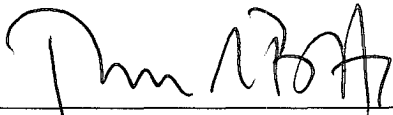
183. PepsiCo exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper tax liability in a timely fashion.
184. PepsiCo has a history of timely filing Illinois corporate income tax returns and paying Illinois corporate income tax in a timely manner.
185. The late payment penalties imposed by the Department must be abated for reasonable cause.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order that any penalties assessed by the Department be abated in full and such other and further relief as the Tax Tribunal deems appropriate in this matter.

(Remainder of this page is intentionally blank. Signature page follows.)

PepsiCo Inc.

Date: April 29, 2016

By: 
An Attorney for Petitioner

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Attorney No. 90080

Exhibit A



Illinois Department of Revenue

IL-2848 Power of Attorney

Read this information first

Attach a copy of this form to each specific tax return or item of correspondence for which you are requesting power of attorney. You or your representative may also be required to provide a copy of this form when contacting the Illinois Department of Revenue. If you do not properly complete this form, you will be required to submit a new IL-2848.

Step 1: Complete the following taxpayer information (* indicates required field)

1 PepsiCo Inc. Taxpayer's name*
2 13-1584302 Taxpayer's identification number(s)*
3 700 Anderson Hill Rd. Taxpayer's street address
Purchase NY 10577
City State ZIP

Step 2: Complete the following information (* indicates required field)

4 The taxpayer named above appoints the following representatives as attorneys-in-fact:

Theodore R. Bots
Name*
Baker & McKenzie LLP
Name of firm
300 East Randolph, Suite 5000
Street address*
Chicago IL 60601
City* State* ZIP*
(312) 861-8845
Daytime phone number*
Theodore.Bots@bakermckenzie.com
E-mail address
Income Tax 2010-11
Specific tax type* Year or period*

Matthew Mock
Name*
Baker & McKenzie LLP
Name of firm
300 East Randolph, Suite 5000
Street address*
Chicago IL 60601
City* State* ZIP*
(312) 861-4215
Daytime phone number*
Matthew.Mock@bakermckenzie.com
E-mail address
Income Tax 2010-11
Specific tax type* Year or period*

Julie Townsley
Name*
Baker & McKenzie LLP
Name of firm
300 East Randolph, Suite 5000
Street address*
Chicago IL 60601
City* State* ZIP*
(312) 861-8033
Daytime phone number*
Julie.Townsley@bakermckenzie.com
E-mail address
Income Tax 2010-11
Specific tax type* Year or period*

The attorneys-in-fact named above shall have, subject to revocation, full power and authority to perform any act that the principals can and may perform, including the authority to receive confidential information. If you wish to limit the power of the attorneys-in-fact, specify the actions they may not perform on Line 5.

5 The attorneys-in-fact named above do not have the power to do the following:

Check only the items below you do not wish to grant.

- [X] endorse or collect checks in payment of refunds.
[] receive checks in payment of any refund of Illinois taxes, penalties, or interest.
[] execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
[] execute consents extending the statutory period for assessments or collection of taxes.
[] delegate authority or substitute another representative.
[] file a protest to a proposed assessment.
[] execute offers in compromise or settlement of tax liability.
[] represent the taxpayer before the Illinois Department of Revenue in all proceedings including hearings (requiring representation by an attorney) pertaining to matters specified above.
[] obtain a private letter ruling on behalf of the taxpayer.
[] perform other acts. (explain)

6 This power of attorney revokes all prior powers of attorney on file with the Illinois Department of Revenue with respect to the same matters and years or periods covered by this form, except for the following:

Name Street address City State ZIP Daytime phone number Date granted (repeated for three entries)



7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

Baker & McKenzie LLP, Attn: Theodore Bots								
Name			Name			Name		
300 East Randolph, Suite 5000								
Street address			Street address			Street address		
Chicago IL 60601								
City State ZIP			City State ZIP			City State ZIP		
(312-) 861-8845			()			()		
Daytime phone number			Daytime phone number			Daytime phone number		

Step 3: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

I declare that I am **not** currently under suspension or disbarment and that I am

- a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
- duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
- enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

Check one: <input checked="" type="checkbox"/> Attorney <input type="checkbox"/> C.P.A. <input type="checkbox"/> Enrolled agent	Illinois	<i>[Signature]</i>	4/27/16
	Jurisdiction (state(s), etc.)	Signature	Date
Check one: <input checked="" type="checkbox"/> Attorney <input type="checkbox"/> C.P.A. <input type="checkbox"/> Enrolled agent	Illinois	<i>[Signature]</i>	4/27/16
	Jurisdiction (state(s), etc.)	Signature	Date
Check one: <input checked="" type="checkbox"/> Attorney <input type="checkbox"/> C.P.A. <input type="checkbox"/> Enrolled agent	Illinois	<i>[Signature]</i>	4/27/16
	Jurisdiction (state(s), etc.)	Signature	Date

Step 4: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

<i>[Signature]</i>	Charles F. Mueller	V.P. State & Local Tax	4/26/16
Taxpayer's signature	Print name	Title, if applicable	Date
Spouse's signature	Print name	Title, if applicable	Date
If corporation or partnership, signature of officer or partner	Print name	Title, if applicable	Date

Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following:

Any person signing as or for the taxpayer

- is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

Signature of witness _____ Date _____

Signature of witness _____ Date _____

- appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary _____ Date _____

Notary seal



Exhibit B

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



February 29, 2016



Letter ID: CNXXX135735X5445

#BWNKMGV
#CNXX X135 735X 5445#
PEPSICO INC

PEPSICO INC & AFFILIATES

ATTN: TAX DEPT 3N LAUREN CARTER
700 ANDERSON HILL RD
PURCHASE NY 10577-1401

Taxpayer ID: 13-1584302
Audit ID: A101371904
Reporting period: December 2010
Total Deficiency: \$2,324,557.40
Balance due: \$2,324,557.40

We have audited your account for the reporting period listed above. The members of the combined group are jointly and severally liable for the total balance due. 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 the "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 the date 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 and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the 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 liability 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 assessment total 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,

Constance Beard
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 524-0424

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.

Statement

Date: February 29, 2016
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Letter ID: CNXXX135735X5445

The attached EDA-27, Explanation of Adjustments, details your audit adjustments.

Computation of deficiency

Reporting period: 31-Dec-2010

Income or loss	
Federal taxable income	\$1,438,691,738.00
Net operating loss deduction	\$25,033,537.00
Income tax and replacement tax deduction	\$10,247,743.00
Illinois bonus depreciation addition	\$250,935,043.00
Related party expenses additions	\$957,836,269.00
Other additions	\$0.00
Base income or loss	
Foreign dividends subtraction	\$99,333,040.00
Illinois bonus depreciation subtraction	\$147,273,248.00
Related party expenses subtraction	\$364,038.00
Other subtractions	\$509,726.00
Total subtractions	\$247,480,052.00
Base income or net loss	\$2,435,264,278.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	-\$5,275.00
Business income or loss	\$2,435,269,553.00
Apportionment formula	
Total sales everywhere	\$35,979,472,961.00
Total Illinois sales	\$1,385,437,405.00
Apportionment factor	0.038506
Business income/loss apportionable to IL	\$93,772,489.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$3,397.00
Base income or net loss allocable to IL	\$93,775,886.00
Net income	
Base income or net loss	\$93,775,886.00
IL net loss deduction (NLD)	\$778,005.00
Income after NLD	\$81,286,016.00
Net income	\$92,997,881.00
Net replacement tax	
Replacement tax	\$2,324,947.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$2,324,947.00
Replacement tax investment credits	\$12,241.00

Statement

Date: February 29, 2016
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Letter ID: CNXXX135735X5445

Computation of deficiency	Reporting period: 31-Dec-2010
Net replacement tax	\$2,312,706.00
Net income tax	
Income tax	\$4,463,898.00
Recapture of investment credits	\$0.00
Income tax before credits	\$4,463,898.00
Income tax investment credits	\$525,594.00
Net income tax	\$3,938,304.00
Refund or balance due	
Net replacement tax	\$2,312,706.00
Net income tax	\$3,938,304.00
Total net income and replacement tax due	\$6,251,010.00
Minus tax previously assessed	-\$4,495,069.00
Total tax deficiency	\$1,755,941.00
UPIA-5 late-payment penalty (Audit)	\$351,188.20
Plus interest on tax through February 29, 2016	\$217,428.20
Total deficiency	* \$2,324,557.40
If you intend to pay under protest, you must pay this total deficiency amount.	

Computation of balance due	Reporting period: 31-Dec-2010
Balance due	* \$2,324,557.40

Explanation of Audit Adjustments

Income Tax



February 29, 2016

#BWNKMGV
#CNXX XX23 1281 2964#
PEPSICO INC
PEPSICO INC & AFFILIATES
ATTN: TAX DEPT 3N LAUREN CARTER
700 ANDERSON HILL RD
PURCHASE NY 10577-1401



Letter ID: CNXXXX2312812964

Taxpayer ID: 13-1584302
Account ID: 11653-34528
Audit ID: A101371904
Reporting period: December 2010

<u>Explanation of adjustments for tax period ending 12/31/2010</u>	<u>Income change</u>	<u>Tax impact</u>
We adjusted your addition modifications to include Illinois Income Tax, Illinois Replacement Tax, or both to the extent deducted in the computation of federal taxable income. [35 ILCS 5/203(b)(2)(B), (c)(2)(C), (d)(2)(B)]	\$717,787.00	\$2,017.00
We adjusted your addition modifications to reflect the addback of intangible expense paid to an affiliated company and required to be added back on Schedule 80/20. [Ref: 35 ILCS 5/203(b)(2)(E-13)]	\$269,278,832.00	\$756,926.00
We adjusted your subtraction modifications to reflect the correct amount of Illinois depreciation related to bonus depreciation, assets, and the reversal of the bonus depreciation addback for an asset in the last year you are allowed a federal depreciation deduction for that asset, as required to be shown on Form IL-4562. [35 ILCS 5/203(b)(2)(T), (c)(2)(R), (d)(2)(O)]	\$147,273,248.00	-\$413,976.00
We adjusted your sales by including in the numerator sales of tangible personal property originating in Illinois and delivered to customers in states in which you are not taxable. [86 IL Adm. Code 100.3370(c)(1)(F); 86 IL Adm. Code 100.3200]	\$23,374,619.00	\$109,562.00
We adjusted the sales factor by excluding the portion of your foreign sales that are attributable to the amount of foreign income excluded from your federal taxable income. Gross receipts that are excluded from or deducted in the computation of federal taxable income and that are not added back in the computation of base income, are excluded from both the numerator and denominator of the taxpayer's sales factor. [86 IL Adm. Code 100.3370(a)(2)(B)]	\$3,074,622,845.00	\$503,240.00
We adjusted your Illinois net loss deduction to the amount allowable under Illinois law. [35 ILCS 5/207]	-\$10,933,860.00	\$798,172.00
Interest on tax has been computed as allowed by Illinois law. [35ILCS 735/3-2]		
We are imposing a penalty because you did not pay the amount required to be shown due on your return by the due date for payment. Once an audit has been initiated, the late payment penalty is assessed at 15 percent 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, Waiver of Restrictions, will result in this penalty increasing to 20 percent. [35 ILCS 735/3-3(b-20)(2)]		

Exhibit C

Notice of Deficiency

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



February 29, 2016



Letter ID: CNXXXX164455X568

#BWNKMGV
#CNXX XX16 4455 X568#
PEPSICO INC
PEPSICO INC & AFFILIATES
ATTN: TAX DEPT 3N LAUREN CARTER
700 ANDERSON HILL RD
PURCHASE NY 10577-1401

Taxpayer ID: 13-1584302
Audit ID: A101371904
Reporting period: December 2011
Total Deficiency: \$6,053,376.26
Balance due: \$6,088,376.26

We have audited your account for the reporting period listed above. The members of the combined group are jointly and severally liable for the total balance due. 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 the "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 the date 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 and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the 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 liability 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 assessment total 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,

Constance Beard
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 524-0424

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.

Statement

Date: February 29, 2016
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Letter ID: CNXXXX164455X568

The attached EDA-27, Explanation of Adjustments, details your audit adjustments.

Computation of deficiency

Reporting period: 31-Dec-2011

Income or loss	
Federal taxable income	\$1,395,652,666.00
Net operating loss deduction	\$25,033,537.00
Income tax and replacement tax deduction	\$10,481,415.00
Illinois bonus depreciation addition	\$702,500,144.00
Related party expenses additions	\$234,451,493.00
Distributive share of additions	\$8,320.00
Other additions	\$0.00
Base income or loss	
Foreign dividends subtraction	\$322,972,542.00
Illinois bonus depreciation subtraction	\$248,243,197.00
Other subtractions	\$952,664.00
Total subtractions	\$572,168,403.00
Base income or net loss	\$1,795,959,172.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	-\$978,913.00
Business income or loss	\$1,796,938,085.00
Apportionment formula	
Total sales everywhere	\$46,091,848,299.00
Total Illinois sales	\$1,534,997,054.00
Apportionment factor	0.033303
Business income/loss apportionable to IL	\$59,843,429.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	-\$204,345.00
Base income or net loss allocable to IL	\$59,639,084.00
Net income	
Base income or net loss	\$59,639,084.00
IL net loss deduction (NLD)	\$0.00
Net income	\$59,639,084.00
Net replacement tax	
Replacement tax	\$1,490,977.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$1,490,977.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$1,490,977.00

Statement

Date: February 29, 2016
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Letter ID: CNXXXX164455X568

Computation of deficiency

Reporting period: 31-Dec-2011

Net income tax	
Income tax	\$4,174,736.00
Recapture of investment credits	\$0.00
Income tax before credits	\$4,174,736.00
Income tax investment credits	\$968,977.00
Net income tax	\$3,205,759.00
Refund or balance due	
Net replacement tax	\$1,490,977.00
Net income tax	\$3,205,759.00
Total net income and replacement tax due	\$4,696,736.00
Total tax deficiency	\$4,696,736.00
UPIA-5 late-payment penalty (Audit)	\$939,347.20
Plus interest on tax through February 29, 2016	\$417,293.06
Total deficiency	* \$6,053,376.26
If you intend to pay under protest, you must pay this total deficiency amount.	

Computation of balance due

Reporting period: 31-Dec-2011

Remaining amount due (or overpaid)	\$35,000.00
Balance due	* \$6,088,376.26

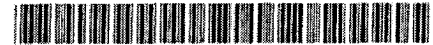
Explanation of Audit Adjustments

Income Tax



February 29, 2016

_____ #BWKNMGV
 _____ #CNXX XX97 5673 4885#
 PEPSICO INC
 PEPSICO INC & AFFILIATES
 ATTN: TAX DEPT 3N LAUREN CARTER
 700 ANDERSON HILL RD
 PURCHASE NY 10577-1401



Letter ID: CNXXXX9756734885

Taxpayer ID: 13-1584302
Account ID: 11653-34528
Audit ID: A101371904
Reporting period: December 2011

<u>Explanation of adjustments for tax period ending 12/31/2011</u>	<u>Income change</u>	<u>Tax impact</u>
We adjusted your taxable income to correctly reflect combined unitary income for the UBG as revised. [35 ILCS 5/1501(a)(27)]	\$2,743,739,901.00	\$8,680,603.00
We adjusted your addition modifications to include Illinois Income Tax, Illinois Replacement Tax, or both to the extent deducted in the computation of federal taxable income. [35 ILCS 5/203(b)(2)(B), (c)(2)(C), (d)(2)(B)]	\$10,481,415.00	\$33,161.00
We adjusted your addition modifications to reflect the addback of interest paid to an affiliated company and required to be added back on Schedule 80/20. [Ref: 35 ILCS 5/203(b)(2)(E-12)]	-\$241,371,472.00	-\$763,647.00
We adjusted your subtraction modifications to reflect the correct amount of Illinois depreciation related to bonus depreciation, assets, and the reversal of the bonus depreciation addback for an asset in the last year you are allowed a federal depreciation deduction for that asset, as required to be shown on Form IL-4562. [35 ILCS 5/203(b)(2)(T), (c)(2)(R), (d)(2)(O)]	\$248,243,197.00	-\$785,388.00
We adjusted your subtraction modifications to reflect the correct deduction of the interest received from an 80/20 company or a non-combination company for which an addition modification was made under 35 ILCS 5/203(b)(2)(E-12). [Ref: 35 ILCS 5/203(b)(2)(W)]	-\$114,680,978.00	\$362,826.00
We adjusted your distributive share of subtractions passed through to you from a partnership, Subchapter S corporation, trust or estate, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203]	-\$3,564,421.00	\$11,277.00
We corrected your subtraction modification to reflect the correct amount disallowed as interest expense by IRC Section 291(a)(3). [35 ILCS 5/203(b)(2)(I)]	-\$1,081,520.00	\$3,422.00
We adjusted your sales by including in the numerator sales of tangible personal property originating in Illinois and delivered to customers in states in which you are not taxable. [86 IL Adm. Code 100.3370(c)(1)(F); 86 IL Adm. Code 100.3200]	\$47,074,178.00	\$56,936.00
We adjusted the sales factor by excluding the portion of your foreign sales that are attributable to the amount of foreign income excluded from your federal taxable income. Gross receipts that are excluded from or deducted in the computation of federal taxable income and that are not added back in the computation of base income, are excluded from both the numerator and denominator of the taxpayer's sales factor. [86 IL Adm. Code 100.3370(a)(2)(B)]	-\$1,953,595,169.00	\$73,219.00

Date: February 29, 2016

Letter ID: CNXXXX9756734885
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Account ID: 11653-34528
Audit ID: A101371904
Reporting period: December 2011

<u>Explanation of adjustments for tax period ending 12/31/2011</u>	<u>Income change</u>	<u>Tax impact</u>
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)]	\$3,815,730,752.00	-\$149,003.00
We adjusted/disallowed your enterprise zone investment credit to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/201(f)]	\$31,093.00	-\$31,093.00
We adjusted/disallowed your economic development for a growing economy (EDGE) credit to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/211]	\$937,844.00	-\$937,884.00
Interest on tax has been computed as allowed by Illinois law. [35ILCS 735/3-2]		
We are imposing a penalty because you did not pay the amount required to be shown due on your return by the due date for payment. Once an audit has been initiated, the late payment penalty is assessed at 15 percent 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, Waiver of Restrictions, will result in this penalty increasing to 20 percent. [35 ILCS 735/3-3(b-20)(2)]		

Exhibit D

Taxpayer Statement



February 2, 2016

TDD 1 800 544-5304



Letter ID: CNXXXX8968866725

#BWNKMGV
#CNXX XX89 6886 6725#
PEPSICO INC
PEPSICO INC & AFFILIATES
ATTN: TAX DEPT 3N LAUREN CARTER
700 ANDERSON HILL RD
PURCHASE NY 10577-1401

Account ID: 11653-34528
FEIN: 13-1584302



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

IL Business Income Tax

You have available credits of \$862,244.60

Account ID: 11653-34528

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2003	3,943,021.00	4,852.40	364,617.70	-	(4,319,769.70)	(7,278.60)
31-Dec-2013	-	-	-	-	(854,966.00)	(854,966.00)

SOA

P-000495

If necessary, respond to:

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19004
SPRINGFIELD IL 62794-9004

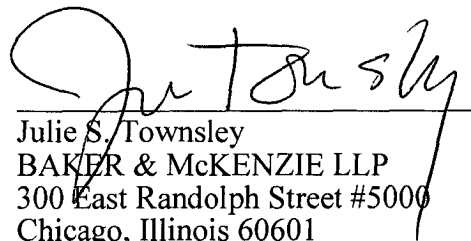
STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

PROOF OF SERVICE

The undersigned, being first duly sworn upon oath, deposes and states that a copy of the Petition of PepsiCo Inc. and Affiliates has been served upon the below-named party by hand delivery.

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

Being a duly licensed attorney in the State of Illinois this 29th day of April, 2016.


Julie S. Townsley
BAKER & McKENZIE LLP
300 East Randolph Street #5000
Chicago, Illinois 60601
(312) 861-8000

Under penalties of perjury by law pursuant to 735 ILCS 5/1-109, I certify that the foregoing pleadings were served as set forth above.