

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

PEPSICO, INC. AND AFFILIATES,)	
)	Case Nos. 16 TT 82 and 17 TT 16
Petitioner,)	
)	
v.)	
)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

**RESPONDENT ILLINOIS DEPARTMENT OF REVENUE’S
CROSS MOTION FOR SUMMARY JUDGMENT – 80/20 ISSUE PENALTIES**

Respondent, Illinois Department of Revenue, hereby moves the Illinois Independent Tax Tribunal (the “Tax Tribunal”) to enter an order granting summary judgment in favor of the Department upholding the Department’s assessment of certain late payment penalties identified below, addressed by Count X of 16-T-82 (the “First Petition”) and Count XV of 17-TT-16 (the “Second Petition”), pursuant to Section 2-1005 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1005. Specifically, in support of this Motion for Summary Judgment, the Department files contemporaneously a brief in support of the motion, and states as follows:

1. The Illinois Department of Revenue audited PepsiCo’s Illinois Corporation Income and Replacement Tax Returns for reporting periods ending December 2010 - December 2013 and issued notices of deficiency for each of these reporting periods.
2. PepsiCo filed the First Petition on April 29, 2016 and the Second Petition on February 8, 2017.

3. The parties have engaged in extensive formal and informal discovery with regard to each of the counts at issue in the First Petition and the Second Petition.

4. As a result of this discovery, the parties filed an extensive joint stipulation of fact along with joint exhibits with the Tax Tribunal on January 17, 2020. There are no material facts in dispute.

5. The parties respectively previously filed motions for summary judgment on Count I of the First and Second Petitions. These counts addressed whether a PepsiCo subsidiary, Frito-Lay North America, Inc. (“FLNA”), had been properly excluded by PepsiCo from its Illinois combined return unitary group as an 80/20 company. See 35 ILCS 5/1501(a)(27).

6. The Tribunal in its “Decision On Summary Judgment Motions” dated May 4, 2021 ruled in favor of the Department that “FLNA cannot be considered an 80/20 company and . . . FLNA must be included in the PepsiCo Illinois unitary group.”

7. This Motion for Summary Judgment pertains to the late payment penalties imposed by the Department, pursuant to Uniform Penalty and Interest Act, 35 ILCS 735/3-1 et. seq. (“UPIA”) section 3-3(b-20), based on PepsiCo’s underpayment of Illinois income taxes resulting from PepsiCo’s improper exclusion of FLNA from its Illinois unitary group (the “80/20 Issue Penalties”). The Department and PepsiCo have previously resolved penalties resulting from other contended tax issues. (the “Non-80/20 Issue Penalties”).

8. Based upon the stipulated facts, the Illinois Department of Revenue is entitled to judgment as a matter of law. See 35 ILCS 5/2-1005(c).

WHEREFORE, PepsiCo respectfully requests that the Tax Tribunal enter an order (1) granting it summary judgment on Count X of the First Petition upholding the Department’s assessment of 80/20 Issue Penalties; (2) granting it summary judgment on Count XV of the

Second Petition upholding the Department's assessment of 80/20 Issue Penalties; and (3) providing any such additional relief as the Tax Tribunal deems just and proper.

Respectfully submitted,

Illinois Department of Revenue

By: */s/ Alan V. Lindquist*
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CERTIFICATE OF SERVICE

The undersigned counsel of record certifies that a copy of the **RESPONDENT ILLINOIS DEPARTMENT OF REVENUE'S CROSS MOTION FOR SUMMARY JUDGMENT - 80/20 ISSUE PENALTIES** was served on March 17, 2022 on the following persons:

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