

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

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

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**PETITIONER’S MOTION FOR SUMMARY JUDGMENT  
FOR REASONABLE CAUSE PENALTY ABATEMENT**

Petitioner, PepsiCo, Inc. and Affiliates (“PepsiCo”), hereby moves the Illinois Independent Tax Tribunal (the “Tax Tribunal”) to enter an order granting summary judgment on Count X of Petition No. 16 TT 82 (the “First Petition”) and Count XV of Petition No. 17 TT 16 (the “Second Petition”) pursuant to Section 2-1005 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1005. In support of this Motion for Summary Judgment, PepsiCo files contemporaneously its Memorandum In Support of Summary Judgment, with supporting documents, and states as follows:

1. Summary judgment is warranted if there is no issue of material fact and the moving party is entitled to judgment as a matter of law. 35 ILCS 5/2-1005(c).
2. The Illinois Department of Revenue (the “Department”) audited PepsiCo’s Illinois Corporation Income and Replacement Tax Returns for reporting periods ending December 2010 - December 2013 and issued four Notices of Deficiency (“Notices”) for each of these reporting periods.
3. Each of the Notices contained “UPIA-5 late-payment penalties.”
4. PepsiCo filed the First Petition on April 29, 2016 and the Second Petition on

- February 8, 2017.
5. PepsiCo protested the penalties on the basis of “reasonable cause” (First Petition, Count X and Second Petition, Count XV).
  6. 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.
  7. On August 8, 2017, the Tax Tribunal entered an order resolving Counts II, IV, VI, VII, and VIII of the First Petition and Counts II and IV of the Second Petition.<sup>1</sup>
  8. The Parties filed Joint Stipulations of Fact with the Tax Tribunal on January 17, 2020.
  9. The Parties have conferred and agreed in principle to settle all unresolved counts / issues in connection with the above-captioned matters with the exception of: i) the classification of Frito-Lay North America, Inc. (“FLNA”) as an “80/20 company” (Count I of the First Petition and Count I of the Second Petition) (the “FLNA 80/20 Company Issue”); and ii) penalties assessed by the Department against PepsiCo solely in connection with the FLNA 80/20 Company Issue for the 2011 - 2013 tax years (Count X of the First Petition and Count XV of the Second Petition) (the “FLNA 80/20 Company Penalty Assessment”).
  10. The Tax Tribunal issued a decision regarding the FLNA 80/20 Company Issue on April 13, 2021.
  11. The Parties are in agreement on resolution of Counts III, V, IX, X of the First Petition and Counts III, V-XIV of the Second Petition, with abatement of any and

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<sup>1</sup> The Department has agreed to abate all related penalties in connection with these counts.

- all related penalties.
12. Only the FLNA 80/20 Company Penalty Assessment remains to be decided by the Tax Tribunal.
  13. There are no material facts in dispute on Count X of the First Petition or Count XV of the Second Petition in connection with this Motion for Summary Judgment.
  14. PepsiCo is entitled to summary judgment on Count X of the First Petition and Count XV of the Second Petition.
  15. The Department's assessment of penalties is unwarranted as PepsiCo acted in good faith and exercised ordinary business care and prudence when it determined to classify FLNA as an 80/20 company pursuant to the Illinois Income Tax Act, the Department's regulations, and interpretive authorities. *See* 35 ILCS 735/3-8 and 86 Ill. Admin. Code § 700.400.

WHEREFORE, Petitioner respectfully requests that the Tax Tribunal enter an order (1) granting it summary judgment on Count X of the First Petition; (2) granting it summary judgment on Count XV of the Second Petition; and (3) providing any such additional relief as the Tax Tribunal deems just and proper.

Respectfully submitted,

**PepsiCo, Inc. and Affiliates**

Dated: March 17, 2022

By: /s/ Theodore R. Bots  
Attorney for Petitioner

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**CERTIFICATE OF SERVICE**

The undersigned counsel of record certifies that a copy of the **PETITIONER’S  
MOTION FOR SUMMARY JUDGMENT FOR REASONABLE CAUSE PENALTY  
ABATEMENT** was served on March 17, 2022 to the following persons:

<b>Judge James M. Conway</b> Chief Administrative Law Judge Illinois Independent Tax Tribunal 160 N. LaSalle Street, Room N506 Chicago, IL 60601 James.Conway@illinois.gov	<b>Alan V. Lindquist</b> Illinois Department of Revenue Special Assistant Attorney General 100 W. Randolph Street, 7th Floor Chicago, IL 60601 Alan.Lindquist@illinois.gov
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