

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.)	

**PETITIONER PEPSICO, INC. AND AFFILIATES’
MOTION FOR SUMMARY JUDGMENT**

Petitioner, PepsiCo, Inc. and Affiliates, hereby moves the Illinois Independent Tax Tribunal (the “Tax Tribunal”) to enter an order granting summary judgment on Count I of Petition No. 16 TT 82 (the “First Petition”) and Count I 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 a memorandum with supporting documents, 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.¹

¹ 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.

4. As a result of this discovery, the parties filed an extensive joint stipulation of fact with the Tax Tribunal on January 17, 2020.

5. The parties are in agreement that there are no material facts in dispute. The parties further agree that whether Frito-Lay North America, Inc. is excluded from PepsiCo's Illinois unitary combined group as an "80/20 Company" pursuant to 35 ILCS 5/502(e) and 5/1501(a)(27) is purely a question of law.

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

WHEREFORE, Petitioner respectfully requests that the Tax Tribunal enter an order (1) granting it summary judgment on Count I of the First Petition; (2) granting it summary judgment on Count I 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

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² The parties are in agreement Counts III, V, IX, X of the First Petition and Counts III, V-XII of the Second Petition shall be held in abeyance pending resolution of this Motion for Summary Judgment on Count I of each petition.

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CERTIFICATE OF SERVICE

The undersigned counsel of record certifies that a copy of the **PETITIONER PEPSICO, INC. AND AFFILIATES' MOTION FOR SUMMARY JUDGMENT** was served on April 17, 2020 to the following persons:

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