

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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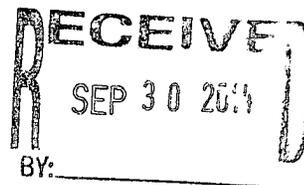
WASHINGTON MUTUAL, INC.,

Petitioner,

v.

ILLINOIS DEPARTMENT  
OF REVENUE,

Respondent.



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**PETITION**

The Petitioner, Washington Mutual, Inc., hereby petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notice of Denial (“Notice”) issued by the Illinois Department of Revenue (“Department”), for the reasons stated below:

**INTRODUCTION**

1. The “Notice” was issued by the Department on April 23, 2014 denying a refund in the amount of \$603,230 in corporate income tax for the taxable period January 1, 2006 through December 31, 2006. A copy of the “Notice” is attached to this Petition.

2. For the year in question, Petitioner was a corporation with its principal place of business in Seattle, Washington.

3. Petitioner is located at 1201 Third Avenue, Suite 3000 Seattle, WA 98101, and its telephone number is (206) 432-8732. The Taxpayer Account number is 91-1653725.

4. During its audit examination, the Department modified the Petitioner’s apportionment factor and decreased the Receipts Everywhere for the tax year ended 12/31/2006.

The decrease was a result of the Department's inclusion of net intangible losses beyond the extent of related net gains.

5. The Illinois Administrative Code provides that net losses from sales of business intangibles may only be included in the sales factor to the extent of net gains from such sales. Therefore, the net losses should have been entirely disregarded from Receipts Everywhere rather than result in a reduction.

### **BACKGROUND AND RELEVANT FACTS**

6. Petitioner filed a return for taxable period January 1, 2006 through December 31, 2006 on October 12, 2009.

7. The Department provided Petitioner with audit results and proposed deficiencies on September 24, 2009. There proposed deficiencies showed a tax increase of \$986,318 for the tax year ended 12/31/2006.

8. Petitioner filed an amended Illinois return on March 24, 2011 reflecting changes due to the Internal Revenue Service's final adjustments signed September 27, 2010. The amended return showed a refund balance of \$1,012,064.

9. Petitioner filed a claim for refund for the taxable period January 1, 2006 through December 31, 2006 on June 8<sup>th</sup>, 2011.

10. The Illinois Department of Revenue Informal Conference Board reviewed the proposed adjustments on August 9, 2012 and made no change to the Department's Receipts Everywhere adjustment. The proposed deficiency for tax year ended 12/31/2006 was revised to \$601,824, reflecting an adjustment on a separate agreed upon issue.

11. Department issued Illinois Form EDA-153 (Acceptance of Revised Claim for Refund) dated May 31, 2013 allowing \$1,012,064 of refund claimed for the taxable period January 1, 2006 through December 31, 2006.

12. Department issued a Notice of Denial dated April 23, 2014 denying a refund in the amount of \$603,230 in corporate income tax for the taxable period January 1, 2006 through December 31, 2006.

### **APPLICABLE LAW**

13. Illinois Administrative Code ("IAC") §100.3380(c)(5)

14. Illinois Department of Revenue General Information Letter (“GIL”) No. IT 00-0061-GIL, 08/15/2000

### **ERROR I**

15. During its audit examination, the Department decreased the Petitioner’s Receipts Everywhere for the tax year ended 12/31/2006 by including “net losses” in the sales factor.

16. The Department used the Petitioner’s Federal consolidated Form 1120, U.S. Corporation Income Tax Return, and took the amount strictly from Line 10, “Other Income” as reflected on page 1 of the Form 1120. The Department included this amount in calculating Receipts Everywhere.

17. The Department was provided support to show the detail for the “Other Income,” showing large net losses within the “Other Income” amount.

18. The “Other Income” amount represents a total amount of income or loss from a variety of different types of transactions, such as losses already reflected to the extent of any related gains and income from Deposit Account Fees and Bank Card Fees.

19. Pursuant to IAC §100.3380(c)(5), net losses from the sales of business intangibles may only be included in the sales factor to the extent of net gains from such sales.

20. Providing additional guidance, GIL IT 00-0061-GIL clarifies the proper application of IAC §100.3380(c)(5) through various examples.

21. In situation 3 of GIL IT 00-0061-GIL, a taxpayer has net capital loss from an intangible of \$20,000 and other receipts of \$8,000 attributable to Illinois. Total other receipts, including those attributed to Illinois, are \$30,000. Proper application of IAC §100.3380(c)(5) entirely disregards the capital loss of \$20,000 and results in a sales factor of 0.266666 (the \$8,000 of other receipts divided by \$30,000 of total other receipts).

22. Losses reported in “Other Income” by the Petitioner are total “net losses” that had been utilized to the extent of the net gains and should not be offset with other unrelated receipts. Therefore, the Petitioner followed proper application of IAC §100.3380(c)(5) by entirely disregarding the “net loss” amount in the Receipts Everywhere computation.

23. The Department included losses beyond the extent of net gains from related sales and erroneously reduced the Receipts Everywhere amount.

**CONCLUSION AND RELIEF REQUESTED**

24. The Department included net intangible losses beyond the extent of related net gains and erroneously decreased the Petitioner's Receipts Everywhere. The Petitioner appropriately applied the Illinois Administrative Code and disregarded net intangible losses from Receipts Everywhere.

25. Petitioner respectfully requests that the Department's "Notice" denying \$603,230 in corporate income tax refund for the taxable period January 1, 2006 through December 31, 2006 be canceled for the reasons contained herein.

Washington Mutual, Inc.

By:  \_\_\_\_\_,  
General Counsel Representing Petitioner.

Representatives:

Charles Edward Smith  
General Counsel  
WMI Liquidating Trust  
On behalf of WMI Holding Corp. (formerly known as Washington Mutual, Inc.)

1201 3rd Avenue  
Suite 3000  
Seattle, WA. 98101

(206) 432-8732  
chad.smith@wamuinc.net



## Illinois Department of Revenue

101 W. Jefferson St.  
Springfield, IL 62702

### NOTICE OF DENIAL

WASHINGTON MUTUAL INC.  
C/O 1201 THIRD AVE SUITE 750  
SEATTLE, WA 98101-3074

April 23, 2014

FORM: IL-1120

FEIN: 91-1653725

TAXABLE YEAR ENDING:  
12/31/2006

AMOUNT DENIED  
\$603,230.00

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim for refund of income tax overpayment in the amount of \$\$1,012,064.00 for the taxable year ending 12/31/2006, filed on 03/24/2011, is denied to the extent shown above.

IF YOU DO NOT AGREE, Section 910(a) of the Act provides that the Department shall reconsider the denial if within 60 days of the date of this notice, the claimant or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the proposed denial of your claim, you may file a protest and, if desired, request a hearing. If an adequate and timely protest is not received, the denial of your claim in the amount shown above will become final as of the expiration of the aforementioned 60-day period pursuant to Section 909(f). A protest, if filed, should be forwarded to the address shown below.

Sincerely,  <sup>3</sup>

Brian Hamer  
Director

Enclosures: EAR-14  
IDR-867  
Return Envelope

NOTICE SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD, IL 62794-9012  
PHONE: 217 785-4472  
ATTENTION: JD A384870400

## STATEMENT

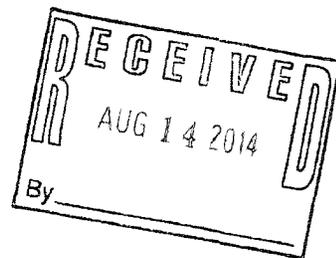
Date: April 23, 2014

Name: WASHINGTON MUTUAL INC.  
C/O 1201 THIRD AVE SUITE 750  
SEATTLE, WA 98101-3074

TAXABLE YEAR ENDING: 12/31/2006

FEIN: 91-1653725  
Audit Track: A384870400

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim for refund of income tax overpayment in the amount of \$1,012,064.00 for the taxable year ending 12/31/2006, filed on 03/24/2011, is partially denied by \$603,230.00 for a net claim amount of \$408,834.00 for this year. The Department holds the tax as determined by the audit examination concluded on 05/23/2013 to be the correct liability for this year and thus finds a denial of overpayment to exist.



**Illinois Department of Revenue**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
Willard Ice Building  
101 West Jefferson Street – Level 5SW  
Springfield, IL 62702  
(217)782-6995

July 25, 2014

Curt Brouwer, Vice-President of Tax  
WMI Holding Corp. (formerly known as Washington Mutual Inc.)  
12-1 Third Avenue, Suite 3000  
Seattle, WA 98101

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**  
Washington Mutual Inc.  
FEIN: 91-1653725  
Notice of Denial letter dated April 23, 2014

Dear Mr. Brouwer:

The Office of Administrative Hearings of the Illinois Department of Revenue received your protest and request for an administrative hearing for the above Notice of Denial of claim for refund. The mailing date of your protest and request for hearing indicate that the protest was sent within the 60-day protest period for requesting an administrative hearing stated on the above Notice. However, the amount of claim at issue for the protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest) or (\$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for protests filed on or after January 1, 2014. For protests that exceed the statutory amount and are filed on or after January 1, 2014, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.* **Because the Department does not have jurisdiction over this protest, the Department is respectfully dismissing your protest and request for administrative hearing.**

Because of these recent changes in Illinois law, the Department and the Tax Tribunal recognize that there may be instances, such as this, when a protest and request for an administrative hearing may be filed in the wrong jurisdiction. The Tax Tribunal's website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) contains rules that include guidance on filing in the wrong jurisdiction and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that a timely protest that is dismissed by the Department for lack of jurisdiction may be filed with the Tax Tribunal within 60 days of the notice of such dismissal.** See Subsection (a)(3) of Section 5000.310 of the Tax Tribunal's rules. Please note that the Tax Tribunal has different requirements

than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Charlton". The signature is written in a cursive style with a large, sweeping initial "T".

Terry D. Charlton  
Chief Administrative Law Judge  
Illinois Department of Revenue

TDC:vs