



**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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WASHINGTON MUTUAL, INC.	)	
v.	)	<b>14-TT-177</b>
	)	
ILLINOIS DEPARTMENT OF REVENUE, Department	)	

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**ANSWER**

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Taxpayer’s Petition respectfully pleads as follows:

**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 fro the tax year period January 1, 2006 through December 31, 2006. A copy of the “Notice is attached to this Petition.

**ANSWER:** The Department admits the statements contained in Paragraph 1.

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

**ANSWER:** The Department admits the statements contained in Paragraph 2.

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.

**ANSWER:** The Department admits the statements contained in Paragraph 3.

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.

**ANSWER:** The Department denies the statements contained in Paragraph 4 because the term “related gains” is not defined.

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.

**ANSWER:** Paragraph 5 contains legal conclusions, not material facts and therefore, the Department is not required to answer pursuant to Tribunal Rule 310(b)(2). To the extent any facts are alleged, they are denied.

### **BACKGROUND AND RELEVANT FACTS**

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

**ANSWER:** The Department admits the statement in Paragraph 6 to the extent it is referring to form IL-1120.

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.

**ANSWER:** The Department admits the statements contained in Paragraph 7.

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.

**ANSWER:** The Department admits the statements contained in Paragraph 8.

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.

**ANSWER:** The Department admits the statements contained in Paragraph 9.

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.

**ANSWER:** The Department admits the statements contained in Paragraph 10.

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.

**ANSWER:** The Department admits that Illinois Form EDA-153 referred to in Paragraph 11 was issued on or about May 31, 2013.

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.

**ANSWER:** The Department admits the statement contained in Paragraph 12.

### **APPLICABLE LAW**

13. Illinois Administrative Code (“IAC”) Section 100.3380(c)(5).

**ANSWER:** The Department denies that the cited regulation is the applicable authority in this case. The applicable Department Regulation is Section 100.3400 (Apportionment of Business Income of Financial Organizations for Taxable Years Ending Prior to December 31, 2008 (IITA 304(c)). See 86 Ill. Admin. Code, Ch. 1, Section 100.3400.

14. Illinois Department of Revenue General Information Letter (“GIL”) No. IT 00-0061-GIL, 8/15, 2000.

**ANSWER:** The Department denies that the cited GIL is applicable to this case.

### **ERROR 1**

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.

**ANSWER:** The Department admits the statement contained in Paragraph 15.

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 Form 1120. The Department included this amount in calculating Receipts Everywhere.

**ANSWER:** The Department admits the statements contained in Paragraph 16.

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

**ANSWER:** The Department denies the statement contained in Paragraph 17. There is no indication as to which documents, if any, were tendered to the Department.

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

**ANSWER:** Paragraph 18 contains legal conclusions, not material facts, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent any facts are alleged, they are denied.

19. Pursuant to IAC Section 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.

**ANSWER:** The Department denies the statement contained in Paragraph 19. Section 100.3380(c)(5) is not the applicable authority in this case.

20. Providing additional guidance, GIL IT 00-0061-GIL clarifies the proper application of IAC Section 100.3380(c)(5) through various examples. To the extent any facts are alleged, they are denied.

**ANSWER:** Paragraph 20 contains legal conclusions, not material facts, and therefore does not require a response pursuant to Rule 310(b)(2). To the extent any facts are alleged, they are denied.

21. In situation 3 of GIL IT 00-0061-GIL, a taxpayer has net capital loss from an intangible of \$20,000 and receipts of \$8,000 attributable to Illinois. Total other receipts, including those attributed to Illinois, are \$30,000. Proper application of IAC Section 100.3380(c)(5) entirely disregards the capital loss of \$20,000 and results in a sales factor of 0.26666 (the \$8,000 of other receipts divided by \$30,000 of total other receipts).

**ANSWER:** Paragraph 21 contains legal conclusions, not material facts, and therefore, does not require a response pursuant to Rule 310(b)(2). Further, Section 100.3380(c)(5) is not the applicable law in this case.

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 Section 100.3380(c)(5) by entirely disregarding the “net loss” amount in the Receipts Everywhere computation.

**ANSWER:** Paragraph 22 contains legal conclusions, not material facts, and therefore, does not require a response pursuant to Rule 310(b)(2). To the extent any facts are alleged, they are denied.

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

**ANSWER:** Paragraph 23 contains legal conclusions, not material facts, and therefore, does not require a response pursuant to Rule 310(b)(2). To the extent any facts are alleged, they are denied.

**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.

**ANSWER:** Paragraph 24 contains legal conclusions, not material facts, and therefore, does not require a response pursuant to Rule 310(b)(2). To the extent any facts are alleged, they are denied.

25. Petitioner respectfully request 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.

**WHEREFORE,** the Department prays that the Tribunal enter an Order that:

- a. denies the Petitioner's prayer for relief;
- b. finds the Notice of Denial is correct as issued;
- c. orders judgment in favor of the Department and against the Petitioner; and
- d. grants any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

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