ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

INNOPHOS HOLDINGS INC.,	)	
	)	
Petitioner,	)	
	)	**Case No. 14-TT-214**
v.	)	
	)	**James M. Conway**
ILLINOIS DEPARTMENT OF REVENUE,	)	**Chief Administrative Law Judge**
	)	
Respondent.	)	

ANSWER

NOW COMES the Illinois Department of Revenue (the "Department"), through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to the Innophos Holdings, Inc. ("Petitioner") Petition, respectfully pleads as follows:

Jurisdiction and Venue

1. This timely petition involves two Notices of Deficiency ("NOD") that each assess an amount in excess of $15,000.00 in tax, penalty and interest under a tax law identified in Section 1-45 of the Tax Tribunal Act; therefore, the Tax Tribunal has jurisdiction over this petition.

ANSWER: The Department admits that it issued two Notices of Deficiency to Petitioner on or about September 11, 2014 for the tax years ending December 2009 and 2010 in the amounts of $1,406,079.49 and $1,126,050.59, respectively. Petitioner's assertions that the Petition was timely filed and that the Tax Tribunal has jurisdiction over this matter are legal conclusions, not material allegations of fact, and therefore do not require an answer pursuant to Illinois Independent Tax Tribunal Regulation ("Rule") 310(b)(2) (86 Ill. Adm. Code §5000.310).

The Department admits the existence, force, and effect at all relevant times of the statutes set forth or referred to in Paragraph 1.

2. Innophos accepts the Tax Tribunal's designation of its office in Cook County to conduct the hearing in this matter.

ANSWER: Paragraph 2 does not contain a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

Alleged Facts Common to all Counts

3. Innophos is a corporation maintaining its principal office at 259 Prospect Plains Road, Cranbury, New Jersey 08512-8000.

ANSWER: The Department admits the allegations in Paragraph 3.

4. Innophos is a leading producer of specialty grade phosphate for the food, pharmaceutical and industrial market segments. Within these segments, Innophos' products cover a broad range of applications including water, paper and metal treatment, agriculture, electronics, textiles, tablets, meat preservation and detergents.

ANSWER: The Department admits that Innophos was a producer of specialty grade phosphate for the food, pharmaceutical and industrial market segments and that its products cover a broad range of applications including water, paper and metal treatment, agriculture, electronics, textiles, tablets, meat preservation and detergents. The Department denies all other allegations in Paragraph 4 and demands strict proof thereof.

5. The Illinois Department of Revenue is an executive agency authorized, among other functions, to administer and enforce the provisions of the Illinois Income Tax Act. 35 ILCS 5/101 *et seq*.

ANSWER: The Department admits that it is an agency of the Executive Branch of the Illinois State Government and is tasked with enforcing the Illinois Income Tax Act (35 ILCS 5/101 *et seq*.), which is relevant to the legal claims raised in Taxpayer's petition. The term "among other functions" is ambiguous; the Department therefore denies all other allegations in Paragraph 5.

6. Innophos corporate headquarters are located in New Jersey.

ANSWER: The Department admits the allegation in Paragraph 6.

7. Innophos manufacturing facilities are located in Illinois, Louisiana, New Jersey, Tennessee, and Utah.

ANSWER: The Department admits that Petitioner and its subsidiaries have fixed assets in Illinois. The Department lacks sufficient knowledge to either admit or deny all other allegations in paragraph 7 and demands strict proof thereof.

8. Innophos also has manufacturing sites in Canada and Mexico.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 8 and demands strict proof thereof.

9. Innophos has two manufacturing plants located in Illinois, one in Chicago Heights, Illinois and the other in Waterway, Illinois.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 9 and demands strict proof thereof.

10. Innophos owns a distribution center in Chicago Heights, Illinois (the "Jacobson Center").

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegation in paragraph 10 and demands strict proof thereof.

11. The Jacobson Center, while owned by Innophos, a third-party under contract to Innophos is responsible for the Jacobson Center operations and employs its own personnel.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 11 and demands strict proof thereof.

12. More than half of Innophos' products are routed through the Jacobson Center.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 12 and demands strict proof thereof.

13. Products made in the United States, Mexico and Canada are routed through the Jacobson Center.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 13 and demands strict proof thereof.

14. Purchase orders for Innophos' products are received and processed in New Jersey.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 14 and demands strict proof thereof.

15. Innophos produces inventory to fill expected customer demand, in anticipation of purchase orders.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 15 and demands strict proof thereof.

16. Innophos uses a business forecast model to predict its customers' order volume in the near future, usually 3 months to a year out.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 16 and demands strict proof thereof.

17. The business forecast relies on the order history of Innophos' customers and is based on the customers' quantity, product and grade order history.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 17 and demands strict proof thereof.

18. The business forecast model determines the amount of inventory that is stocked at any given time at the Jacobson Center, so that product is already on-site and ready to be shipped to customers as purchaser orders are received and processed in New Jersey.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 18 and demands strict proof thereof.

19. Products are shipped and stored in the Jacobson Center even if ultimately they may not be sold or delivered to Illinois customers.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 19 and demands strict proof thereof.

20. Most of the products produced in Illinois and shipped to the Jacobson Center, along with the products produced elsewhere that are shipped to the Jacobson Center, are sold to customers outside of Illinois.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 20 and demands strict proof thereof.

21. The Jacobson Center uses a "pick ticket" authorization system to ship its inventory.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 21 and demands strict proof thereof.

22. When an order is received and processed in New Jersey, a ticket instruction is then sent to the third-party manager of the Jacobson Center to fulfill the ticket. The third-party has no decision making ability; it only picks and ships the products (on a pallet basis) that it is told to ship.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 22 and demands strict proof thereof.

23. The Illinois Income Tax Act (the "IITA") imposes a tax on the net income of every individual, corporation, trust and estate for the privilege of earning or receiving income in or as a resident of Illinois. 35 ILCS 5/101 *et seq.*

ANSWER: Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/101 *et seq*., and states that such law speaks for itself.

24. For a taxpayer that makes sales of tangible personal property, like Innophos, the Illinois corporate income tax is imposed on the taxpayer's "base income," as defined in the IITA (federal taxable income after statutory addition and subtraction modifications) that is: (A) "non-business income" as defined in the IITA which is allocable to Illinois; and (B) "business income" as defined in the IITA (all income other than nonbusiness income) which is "apportionable" to Illinois according to the ratio of Illinois sales to total sales everywhere. That ratio is commonly referred to as the "sales factor" or the "apportionment formula."

ANSWER: Paragraph 24 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/101 *et seq*., and states that such law speaks for itself.

25. The Department's audit staff and management requested and received access to Innophos' books and records supporting its Illinois state tax returns.

ANSWER: The Department admits that personnel from the Department's Audit Division requested access to Petitioner's books and records supporting its Illinois State tax returns. The Department lacks sufficient knowledge to either admit or deny whether the Department received full access to all books and records that would support or challenge Petitioner's Illinois State tax returns. The term "audit staff and management" is vague; the Department therefore denies all remaining allegations in Paragraph 25.

26. The Department's audit of Innophos included the taxable periods ending December 2009 and December 2010 (the "Years at Issue").

ANSWER: The Department admits the allegations in Paragraph 26.

27. The Department's auditor (the "Auditor") determined a total deficiency for the tax period ending December 2009 of $1,406,079.49 (the "2009 Deficiency").

ANSWER: The Department admits the allegations in Paragraph 27.

28. The 2009 Deficiency resulted from (i) the Auditor's adjustment of Innophos' sales factor by adding to the numerator, as "Illinois sales", those sales shipments that originated in Illinois and were delivered to states in which the auditor determined Innophos was not subject to tax; and (ii) the Auditor's adjustment of Innophos' "Illinois sales to include all factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported."

ANSWER: The Department admits that, as detailed in the Statement accompanying the Notice of Deficiency dated September 11, 2014 (see Exhibit 1), the total 2009 Deficiency arose because: (1) pursuant to 86 Ill. Admin. Code 100.3370(c)(1)(F), the Auditor adjusted Petitioner's sales apportioned to Illinois by including sales originating in Illinois and delivered to states in which Petitioner was not taxable; (2) pursuant to 86 Ill. Admin. Code 100.3370(a)(1), the Auditor adjusted Petitioner's Illinois sales to include all factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported; (3) pursuant to 35 ILCS 735/3-3(b-20)(2), a late-payment penalty was assessed, and; (4) interest, as computed through September 11, 2014, was imposed upon the tax. The Department denies all other allegations in Paragraph 28 and demands strict proof thereof.

29. The Auditor proposed an additional late-payment penalty because Innophos "did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the 'Date of Issuance' shown on the form."

ANSWER: The Department admits that, pursuant to 35 ILCS 735/3-3(b-20)(2), and as detailed in the Statement accompanying the Notice of Deficiency dated September 11, 2014, the Department imposed an additional late-payment penalty because Petitioner did not pay the amount shown due on Form IL-870, Waiver of Restrictions, within 30 days after the Date of Issuance shown on the Form. The Department denies all other allegations in Paragraph 29 and demands strict proof thereof.

30. Once an Illinois audit has commenced, an additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within

30 days from the "Date of Issuance" on the Form IL-870, results in an increase of the penalty to 20%. 35 ILCS 735/3-3(b-20)(2).

ANSWER: Paragraph 30 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 735/3-1 *et seq*., and states that such law speaks for itself.

31. The Auditor determined a total deficiency for the tax period ending December 2010 of $1,126,050.59 (the "2010 Deficiency").

ANSWER: The Department admits the allegation in Paragraph 31.

32. The 2010 Deficiency resulted from (i) the Auditor's adjustment of Innophos' sales factor by adding to the numerator, as "Illinois sales", those sales shipments that originated in Illinois and were delivered to states in which the auditor determined Innophos was not subject to tax; and (ii) the Auditor's adjustment of Innophos' "Illinois sales to include all factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported."

ANSWER: The Department admits that, as detailed in the Statement accompanying the Notice of Deficiency dated September 11, 2014 (see Exhibit 2), the total 2009 Deficiency arose because: (1) pursuant to 86 Ill. Admin. Code 100.3370(c)(1)(F), the Auditor adjusted Petitioner's sales apportioned to Illinois by including sales originating in Illinois and delivered to states in which Petitioner was not taxable; (2) pursuant to 86 Ill. Admin. Code 100.3370(a)(1), the Auditor adjusted Petitioner's Illinois sales to include all factorable receipts on federal 1120,

Lines 1 through 10, over federal 1120, Line 1, as originally reported; (3) pursuant to 35 ILCS 735/3-3(a-10), a late-filing or nonfiling penalty was assessed; (4) pursuant to 35 ILCS 735/3-3(b-20)(2), a late-payment penalty was assessed, and; (5) interest, as computed through September 11, 2014, was imposed upon the tax. The Department denies all other allegations in Paragraph 32 and demands strict proof thereof.

33. The Auditor imposed a late-filing or nonfiling penalty because Innophos did not file a processable return by the due date. This penalty is figured at the rate of 2 percent of the amount of tax required to be shown due on Innophos' return, after subtracting any payments made or credits allowed by the due date of the return. This penalty is imposed the day after the original due date of Innophos' return, including any extended due date. The penalty cannot exceed $250. 35 ILCS 735/3-3(a-10).

ANSWER: The Department admits that, pursuant to 35 ILCS 735/3-3(a-10), a late-filing or nonfiling penalty was assessed for the tax year ending December 2009. Department asserts that, Paragraph 33 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 735/3-1 *et seq*., and states that such law speaks for itself. The Department denies all other allegations in Paragraph 33 and demands strict proof thereof.

34. The Auditor imposed the additional late-payment penalty because Innophos "did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the 'Date of Issuance' shown on the form."

ANSWER: The Department admits that, pursuant to 35 ILCS 735/3-3(b-20)(2), the Department assessed a late-payment penalty for the tax year ending December 2010. The Department denies all other allegations in Paragraph 34 and demands strict proof thereof.

35. On September 11, 2014, the Department issued to Innophos two Notices of Deficiency for the tax periods ending December 2009 and December 2010 assessing total deficiencies in the amounts of $1,406,079.49 and $1,126,050.59, respectively. Copies of the 2009 and 2010 Notices of Deficiency are attached hereto as **Exhibit 1** and **Exhibit 2**, respectively.

ANSWER: A copy of the Statutory Notice is required to be attached to the Taxpayer's petition pursuant to Rule 310(a)(1)(D) and is not a material allegation of fact and therefore does not require an answer pursuant to Rule 310(b)(2).

COUNT I

36. Innophos incorporates by this reference and realleges paragraphs 1 through 35 as though fully-set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 35, as if fully set forth herein.

37. The Department's Auditor used the so-called "throwback rule" found in IITA Section 304(a)(3)(B) to increase the portion of Innophos' total business income apportioned to and taxed by Illinois.

ANSWER: The Department admits that the Department's auditor applied the throwback rule to compute Petitioner's sales "in Illinois," which was used to compute Petitioner's Illinois apportionment factor. The Department denies all other factual allegations in Paragraph 37 and demands strict proof thereof.

38. IITA Section 304(a)(3)(B) provides that a taxpayer's sales of tangible personal property made to states in which the taxpayer is not subject to tax are to be treated instead as sales in Illinois (*i.e.*, added to the numerator of the Illinois apportionment sales factor).

ANSWER: Paragraph 38 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304(a)(3)(B) and states that such law speaks for itself.

39. On August 16, 2013, Public Act 98-0478 amended, effective January 1, 2014, the Illinois Income Tax Act with retroactive application to tax years ending on or after December 31, 2008, concerning the apportionment of business income.

ANSWER: Department admits that Public Act 98-0478 amended the Illinois Income Tax Act and that Public Act 98-0478 was effective January 1, 2014. Paragraph 39 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Moreover, the phrase "concerning the apportionment of business income", is vague and overly broad. Therefore, the Department denies all remaining factual allegations in Paragraph 39.

40. As amended by Public Act 98-0478, Section 304 (f) of the IITA provides that for taxable years ending on or after December 31, 2008, if the apportionment provisions of the IITA do not "fairly represent the market for the person's goods, services or other sources of business income," a person may petition for, or the Director may, without a petition, permit or require (i) separate accounting; (ii) exclusion of any one or more factors; (iii) the inclusion of one or more additional factors; or (iv) the employment of any other method to effectuate an equitable allocation and apportionment of the person's business income. 35 ILCS 5/304(f), as amended.

ANSWER: Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304(f) and states that such law speaks for itself.

41. To throwback and add a sale to the Illinois numerator of the sales factor pursuant to IITA Section 304(a)(3)(B) a taxpayer must <u>first</u> determine that the sale was not made to the Illinois market, *i.e.* that the item sold had a final delivery destination in a market other than Illinois.

ANSWER: Paragraph 41 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304(a)(3)(B) and states that such law speaks for itself.

42. The application of Section 304(a)(3)(B) to a tax year ending on or after December 31, 2008, which results in a sale to another state being added to the Illinois numerator, is directly at odds with IITA Section 304(f) as amended by P.A. 98-0478, because the

knowing addition of a non-Illinois sale to the Illinois numerator of the sales factor knowingly does not "fairly represent the market for the person's goods, services or other sources of business income."

ANSWER: Paragraph 42 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304 and states that such law speaks for itself. To the extent an answer is required, the Department denies the factual allegations in Paragraph 42 and demands strict proof thereof.

43. After January 1, 2014, the effective date of P.A. 98-0478, IITA Section 304(a)(3)(B) of the IITA can only be reconciled with IITA Section 304(f) when: (A) it is applied to a tax year ending <u>before</u> December 31, 2008, or (B) the Department, using its authority under IITA Section 304(f) and thus bearing the burden of proof thereunder, determines the application of the throwback rule to a tax year ending <u>on or after</u> December 31, 2008, is necessary to "fairly represent the market for the person's goods, services or other sources of business income."

ANSWER: Paragraph 43 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304 and states that such law speaks for itself. To the extent an answer is required, the Department denies the factual allegations in Paragraph 43 and demands strict proof thereof.

WHEREFORE, the Department prays that the Tribunal enter an order to:

a. deny each prayer for relief in the Petitioner's Petition;

b. find the Notices of Deficiency at issue correct as issued;

c. order judgment in favor of Department and against Petitioner; and

d. grant such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

44. Innophos incorporates by this reference and realleges paragraphs 1 through 43 as though fully-set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 43, as if fully set forth herein.

45. The Department's regulation implementing IITA Section 304(f) provides that:

> **Section 100.3390 Petitions for Alternative Allocation or Apportionment (Section 304(f) of the IITA)**
>
> (c) . . . The party (the Director or the taxpayer) seeking to utilize an alternative apportionment method has the burden of going forward with the evidence and proving by clear and cogent evidence that the statutory formula results in taxation of extraterritorial values and operates unreasonably and arbitrarily in attributing to Illinois a percentage of income out of all proportion to the business transacted in this State. In addition, the party seeking to use an alternative apportionment formula must go forward with the evidence and prove that the proposed alternative apportionment method fairly and accurately apportions income to Illinois based upon the business activity in this State. (emphasis added).

ANSWER: Paragraph 45 contains legal conclusions, not material allegations of fact, and therefore does not require any answer pursuant to Rule 310(b)(2). The Department admits

the existence, force, and effect at all relevant times of 86 Ill. Admin. Code § 100.3390 referred to in Paragraph 45 and states that such law speaks for itself.

46. Because P.A. 98-0478 renders IITA Section 304(a)(3)(B) applicable to tax years ending before December 31, 2008, the Department's adjustment to add non-Illinois sales to the Illinois sales factor numerators of Innophos for 2009 and 2010 is permissible only if, pursuant to IITA Section 304(f) and Section 100.3390 of the Department's regulations, the Department meets the burden of going forward with evidence that proves by clear and cogent evidence that:

a. not throwing back to the Illinois numerator the Innophos sales to states in which it is not subject to income taxation "results in the taxation of extraterritorial values and operates unreasonably and arbitrarily by attributing to Illinois a percentage of income which is out of all proportion to" the market in this State; and,

b. that using the throwback method to increase the Innophos Illinois numerator by throwing back to the numerator the sales of states in which Innophos is not subject to tax does "fairly and accurately apportion income to Illinois based upon" the market in this State.

ANSWER: Paragraph 46, including subparts (a) and (b), contain legal conclusions, not material allegations of fact, and therefore do not require answers pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304 and states that such law speaks for itself. To the extent an answer is required, the Department denies the factual allegations in Paragraph 46, including sub-parts (a) and (b), and demands strict proof thereof.

47. Generally, under Section 904 of the IITA the Department's Notices of Deficiency are *prima facie* correct and shall be prima facie evidence of the correctness of the amount of tax and penalties due.

ANSWER: The Department admits the allegation in Paragraph 47.

48. The Department's Notices of Deficiency are, without more, insufficient to establish a *prima facie* case of alternative apportionment under Section 304(f) of the IITA where the Department is the proponent of the alternative method and therefore, has the burden to prove by clear and cogent evidence that the statutory formula applied by the taxpayer does not fairly and accurately apportion income to Illinois.

ANSWER: Paragraph 48 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 48 and demands strict proof thereof.

WHEREFORE, the Department prays that the Tribunal enter an order to:

a. deny each prayer for relief in the Petitioner's Petition;

b. find the Notices of Deficiency at issue correct as issued;

c. order judgment in favor of Department and against Petitioner; and

d. grant such further relief as this Tribunal deems appropriate under the circumstances.

Count III

49. Innophos incorporates by this reference and realleges paragraphs 1 through 43 as though fully-set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 43, as if fully set forth herein.

50. U.S. Public Law 86-272 provides in pertinent part:

> No State, or political subdivision thereof, shall have power to impose, . . . a net income tax on the income derived within such State by any person from intrastate commerce if the only business activities within such State by or on behalf of such a person during the taxable year are either, or both, of the following . . .
>
> 1. The solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside of the State; . . . and
>
> 2. The solicitation of orders by such a person, or his representative, in such State in the name of or for the benefit of a prospective customer of such a person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in
>
> 15 U.S. Code § 381.

ANSWER: Paragraph 50 does not allege a material fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 15 U.S.C. § 381 referred to in Paragraph 50 and states that such law speaks for itself.

51. In summary, Congress intended for P.L. 86-272 to provide clear guidance to multistate business enterprises, and to thereby relieve them of undue state income tax compliance and economic burdens, by providing immunity from state income taxation to businesses that limited their activities in a state to those specified in the federal law.

ANSWER: Paragraph 51 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect at all relevant times of 15 U.S.C. § 381 referred to in Paragraph 51 and alleges that such law speaks for itself. Further, the Department denies the factual allegations in Paragraph 55 and demands strict proof thereof.

52. Article VI, Cl. 2 of the United States Constitution provides, in pertinent part, that:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; . . .

ANSWER: The Department admits the existence, force, and effect at all relevant times of the United States Constitution.

53. The Department's decision to increase the Illinois tax by the inclusion in the Illinois sales factor numerator of the Innophos sales to states in which P.L. 86-272 relieves Innophos of an income tax burden, frustrates the design and intent of Congress by increasing the burdens on interstate commerce in direct relation to the protection conferred by Congress.

ANSWER: Paragraph 53 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 53 and demands strict proof thereof.

WHEREFORE, the Department prays that the Tribunal enter an order to:

a. deny each prayer for relief in the Petitioner's Petition;

b. find the Notices of Deficiency at issue correct as issued;

c. order judgment in favor of Department and against Petitioner; and

d. grant such further relief as this Tribunal deems appropriate under the circumstances.

Count IV

54. Innophos incorporates by this reference and realleges paragraphs 1 through 43 as though fully-set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 43, as if fully set forth herein.

55. Because of the retroactive application of Public Act 98-0478, Innophos could not have, prior to January 1, 2014, petitioned under Section 304(f) of the IITA to avoid throwback on the basis that Section 304(a)(3)(B) of the IITA did not fairly and accurately reflect the market for Innophos' goods.

ANSWER: Paragraph 55 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 55 and demands strict proof thereof.

56. In 2009 and 2010 Innophos believed, as it does now, that the returns including only its Illinois destination sales in its Illinois sales factor numerator reflected its Illinois market.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 56 and demands strict proof thereof.

57. However, at the time of filing its original 2009 and 2010 Illinois income tax returns, Innophos' belief regarding whether the Illinois apportionment formula fairly and accurately reflected the market for its goods was irrelevant, because from 1969 through January 1, 2014 – during which years Illinois had a three-factor property payroll and sales apportionment formula, then a four factor (double-weighted sales) formula, and finally a single sales factor formula -- Section 304(f) of the IITA provided relief if the statutory apportionment formula did not "fairly represent the extent of a person's business activity in this State" and did not concern itself with a fair representation of the market for a person's goods.

ANSWER: Paragraph 57 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits that Petitioner's "belief" that the Illinois apportionment formula fairly and accurately reflected the market for its goods sold is irrelevant. Department admits the existence, force, and effect of 35 ILCS 5/304(f) and states that such law speaks for itself. Department denies all remaining factual allegations in Paragraph 57.

58. At the time of filing its 2009 and 2010 Illinois returns Section 304(f) of the IITA would not have informed Innophos that relief from the throwback rule of Section 304(a)(3)(B) of the IITA was available upon the basis that it did not fairly reflect the market for Innophos' goods.

ANSWER: Paragraph 58 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force, and effect of 35 ILCS 5/304 and states that such law speaks for itself. To the

extent an answer is required, the Department denies the factual allegations in Paragraph 58 and demands strict proof thereof.

59. The application of throwback in 2014 to the 2009 and 2010 Innophos returns without the retroactive opportunity to obtain relief under the current version of Section 304(f) of the IITA deprives Innophos of due process.

ANSWER: Paragraph 59 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 59 and demands strict proof thereof.

WHEREFORE, the Department prays that the Tribunal enter an order to:

a. deny each prayer for relief in the Petitioner's Petition;

b. find the Notices of Deficiency at issue correct as issued;

c. order judgment in favor of Department and against Petitioner; and

d. grant such further relief as this Tribunal deems appropriate under the circumstances.

COUNT V

60. Innophos incorporates by this reference and realleges paragraphs 1 through 43 as though fully-set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 43, as if fully set forth herein.

61. For both the tax period ending December 2009 and December 2010, the Department imposed a late-payment penalty pursuant to Section 3-3(b-20)(2) of the UPIA.

ANSWER: The Department admits that it imposed a late payment penalty upon Petitioner pursuant to 35 ILCS 735/3-3(b-20)(2) for the Years at Issue.

62. Section 3-8 of the UPIA provides that penalties, other than a fraud penalty, "shall not apply if the taxpayer shows that his failure to . . . pay tax at the required time was due to reasonable cause." 35 ILCS 735/3-8.

ANSWER: Paragraph 62 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 35 ILCS 735/3-8 and states that such law speaks for itself.

63. Innophos made a good faith effort to determine the correct reporting of its sales and use tax liability through the exercise of ordinary business care and prudence.

ANSWER: Paragraph 63 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 63 and demands strict proof thereof.

64. Innophos acted with reasonable cause and therefore, under section 3-8 of the UPIA, no penalties should apply to the audit deficiencies that the Department assessed against Innophos.

ANSWER: Paragraph 64 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 64 and demands strict proof thereof.

WHEREFORE, the Department prays that the Tribunal enter an order to:

a. deny each prayer for relief in the Petitioner's Petition;

b. find the Notices of Deficiency at issue correct as issued;

c. order judgment in favor of Department and against Petitioner; and

d. grant such further relief as this Tribunal deems appropriate under the circumstances.

COUNT VI

65. Innophos incorporates by this reference and realleges paragraphs 1 through 43 as though fully-set forth herein

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 43, as if fully set forth herein.

66. For the tax period ending December 2010, the Department imposed a late-filing or nonfiling penalty pursuant to Section 3-3(a-10) of the UPIA. 35 ILCS 735/3-3(a-10).

ANSWER: The Department admits that it imposed a late-filing or nonfiling penalty upon Petitioner pursuant to 35 ILCS 735/3-3(a-10) for the tax year ending December 31, 2010.

67. Section 3-8 of the UPIA provides that penalties, other than a fraud penalty, "shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. . ." 35 ILCS 735/3-8.

ANSWER: Paragraph 67 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 35 ILCS 735/3-8 and states that such law speaks for itself.

68. Innophos made a good faith effort to file its processable return by the due date through the exercise of ordinary business care and prudence.

ANSWER: Paragraph 68 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 68 and demands strict proof thereof.

69. Innophos acted with reasonable cause and therefore, under section 3-8 of the UPIA, no penalties should apply to the audit deficiencies that the Department assessed against Innophos.

ANSWER: Paragraph 69 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 69 and demands strict proof thereof.

WHEREFORE, the Department prays that the Tribunal enter an order to:

a. deny each prayer for relief in the Petitioner's Petition;

b. find the Notices of Deficiency at issue correct as issued;

c. order judgment in favor of Department and against Petitioner; and

d. grant such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: /s/ Jonathan M. Pope
Jonathan M. Pope
One of the Department's Attorneys

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Dated: December 15, 2014

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

INNOPHOS HOLDINGS INC.,	)	
	)	
Petitioner,	)	
	)	**Case No. 14-TT-214**
v.	)	
	)	**James M. Conway**
ILLINOIS DEPARTMENT OF REVENUE,	)	**Chief Administrative Law Judge**
	)	
Respondent.	)	

AFFIDAVIT OF SANJAY C. SONI
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

STATE OF NEW JERSEY

COUNTY OF BERGEN

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Sanjay C. Soni, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. I reviewed Taxpayer's Illinois Corporate Income and Replacement Tax Returns for the tax years ending December 31, 2009 and December 31, 2010.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 7 through 22, 25, and 56.
5. I am an adult resident of the State of New Jersey and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: 12/10/2014

Sanjay C. Soni
Revenue Auditor III
Illinois Department of Revenue

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

INNOPHOS HOLDINGS INC.,	)	
	)	
Petitioner,	)	
	)	**Case No. 14-TT-214**
v.	)	
	)	**James M. Conway**
THE ILLINOIS DEPARTMENT OF REVENUE,	)	**Chief Administrative Law Judge**
	)	
	)	
Respondent.	)	

NOTICE OF FILING BY ELECTRONIC-MAIL

TO: Mr. Michael J. Wynne
Mr. Adam Beckerink
Ms. Jennifer Waryjas
Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606
(312) 207-6528
mwynne@reedsmith.com

PLEASE TAKE NOTICE, that on December 15, 2014, the Department filed by electronic-mail to Petitioner's designated electronic-mail address, mwynne@reedsmith.com, the attached **ANSWER** with the Illinois Independent Tax Tribunal, located at 160 N. LaSalle Street Room N506, Chicago, Illinois 60601.

Respectfully submitted,

By: __/s/ Jonathan M. Pope_____
Jonathan M. Pope
Special Assistant Attorney General

Jonathan M. Pope
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