

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

PEPPERIDGE FARM, INC. )  
 )  
 ) Petitioner, )  
 ) )  
 ) v. ) No.  
 ) )  
 ) THE ILLINOIS DEPARTMENT OF REVENUE, )  
 ) )  
 ) Defendant. )

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**PETITION**

Petitioner, Pepperidge Farm, Inc. (“Petitioner”), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

**PARTIES**

1. For the tax year ending July 31, 2008 (“Year in Issue”), Petitioner was a Connecticut corporation whose principal business address was 595 Westport Ave., Norwalk, CT, 06851.
2. Petitioner is represented by Fred O. Marcus, David A. Hughes and Christopher T. Lutz of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3210 or [fmarcus@hmbllaw.com](mailto:fmarcus@hmbllaw.com); 312-606-3212 or [dhughes@hmbllaw.com](mailto:dhughes@hmbllaw.com); and [clutz@hmbllaw.com](mailto:clutz@hmbllaw.com) or 312-606-3222, respectively.
3. Petitioner’s FEIN is 06-0613103.
4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

## **NOTICES**

5. On September 22, 2014, the Department denied Petitioner's claim for refund of \$877,626. The Notice of Claim Denial ("Notice") is attached hereto as Exhibit A.

## **JURISDICTION**

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100 and the Illinois Income Tax Act ("Income Tax Act"), 35 ILCS 5/101 et. seq.

7. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notice.

## **BACKGROUND**

8. Petitioner is a manufacturer and seller of cookies, crackers and bread with its headquarters in Connecticut.

9. Petitioner is an indirect, wholly-owned subsidiary of the Campbell Soup Company ("Campbell Soup").

10. Campbell Soup is a manufacturer and distributor of soups, beverages, sauces and other soup related products with its headquarters in New Jersey.

11. Petitioner and its affiliates, including Campbell Soup, filed a combined Illinois corporation income and replacement tax return for the Year in Issue.

12. Petitioner's affiliates included Godiva, Inc. and Godiva Brands, Inc. (hereinafter collectively "Godiva").

13. Godiva was a manufacturer of chocolates and related products.

14. On March 18, 2008, Campbell Soup sold the stock of Godiva to a third party.

15. For federal and state income tax purposes, the stock sale was treated as a deemed asset sale pursuant to an election under section 338(h)(10) of the Internal Revenue Code.

16. As a result of the 338(h)(10) election, Godiva realized a gain of \$423,772,000 on the stock sale.

17. Petitioner reported the gain from the Godiva sale as business income on its original Illinois income tax return and paid tax on an apportioned share of that gain.

18. Petitioner subsequently filed an amended return and requested a refund, re-characterizing the gain as non-business income and allocating the gain entirely outside Illinois.

19. The Department denied Petitioner's refund claim on September 22, 2014. Exhibit A.

20. In the Notice, the Department explained that it "re-characterized as business income the amount of gain (or loss) [Petitioner] received from the sale of property previously used in [Petitioner's] trade or business operation."

## COUNT I

### **The Gain from the Sale of Godiva Is Non-Business Income**

21. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 20, inclusive, hereinabove.

22. The Illinois Income Tax Act defines business income as all income that may be treated as apportionable business income under the Constitution of the United States. 35 ILCS 5/1501(a)(1).

23. Nonbusiness income is all income other than business income. 35 ILCS 5/1501(a)(13).

24. All income characterized as non-business income is allocated either to the location of the asset producing the income or to the seller's commercial domicile. 35 ILCS 5/303(b).

25. In order for the sale of a business to be considered business income, that business must be "unitary" with the seller. *Mobil Oil Corp. v. Comm'r of Taxes of Vermont*, 445 U.S. 425, 439 (1980); *MeadWestvaco Corp. v. Illinois Dep't of Revenue*, 553 U.S. 16 (2008).

26. Godiva was not unitary with Petitioner or Campbell Soup.

27. Godiva operated as an autonomous business entity that did not contribute to or rely on Petitioner or Campbell Soup.

28. Godiva had its own management team and human resources group.

29. Godiva engaged in its own purchasing, marketing, and advertising.

30. Godiva and Petitioner did not manufacture the same products.

31. Godiva and Campbell Soup did not manufacture the same products.

32. The gain on the sale of Godiva constituted nonbusiness income.

33. As nonbusiness income, none of the gain on the sale of Godiva is allocated to Illinois because Godiva had no assets in Illinois at the time of sale and neither Petitioner nor Campbell Soup maintained their commercial domicile in Illinois.

34. Petitioner is entitled to a refund of the Illinois corporate income and replacement tax that it paid on the gain from the sale of Godiva for the Year in Issue.

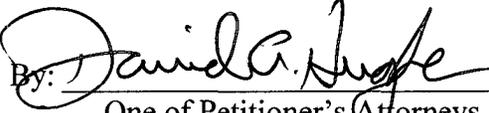
35. The Department's denial of Petitioner's refund claim for the Year in Issue was in error.

**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that the gain on the sale of Godiva constituted nonbusiness income;
- (b) finds and declares that none of the gain on the sale of Godiva should be allocated to Illinois;
- (c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to grant Petitioner's refund claim for the Year in Issue; and
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

**PEPPERIDGE FARM, INC.**  
Petitioner

By:   
One of Petitioner's Attorneys

Fred O. Marcus (fmarcus@hmblaw.com)  
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(312) 606-3200

# Notice of Claim Denial



September 22, 2014

PEPPERIDGE FARM, INC.  
1 CAMPBELL PLACE STOP 37  
CAMDEN, NJ 08101

Account ID: 06-0613103  
Audit ID: A1064722432  
Audit period: 07/31/2008

We have audited your account for the claim for refund filed on the audit period listed above. Attached is the breakdown of full or partial claim denial by period as well as an explanation of the reasons for the denial. (35 ILCS 5/909(e)).

If you agree and your account is in balance, no action is required. You will receive a refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of tax at issue, exclusive of penalty and interest is more than \$15,000, or if you are not claiming an overpayment of tax but the total penalties and interest are more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within 60 days of this notice. If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). If we do not receive your protest within 60 days, this denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final.

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

If you have questions, call us at the telephone number shown below.

Sincerely,

A handwritten signature in black ink that reads "Brian Hamer" with a superscript "3" above the "n" in Hamer.

Brian Hamer  
Director

ILLINOIS DEPARTMENT OF REVENUE  
AUDIT BUREAU  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

(217) 785-4472

# Statement

Date: September 22, 2014  
Name: PEPPERIDGE FARM, INC.  
Taxpayer ID: 06-0613103

## Reason for claim denial

We re-characterized as business income the amount of gain (or loss) you received from the sale of property previously used in your trade or business operations. [86 IL Adm. Code 100.3010(c)(3)]

## Computation of claim denial

Audit period ending:	07/31/2008
Claim receive date:	01/11/2013
Amount of original claim:	\$877,626.00
Amount of proposed adjustment	\$877,626.00
Net claim allowed:	\$0.00

**CERTIFICATE OF SERVICE**

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered by messenger before the hour of 5:00 p.m. on the 21st day of November, 2014.

Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601

A handwritten signature in black ink, reading "David A. Hugh", written over a horizontal line.