

ILLINOIS INDEPENDENT TAX TRIBUNAL

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PEPPERIDGE FARM, INC.,	)	
	)	
Petitioner	)	Docket No. 14-TT-221
	)	
v.	)	Judge Brian Barov
	)	
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	

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**ANSWER**

NOW COMES the Illinois Department of Revenue (“Department”), by and through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and Answers the Petition 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.

**Answer:** The allegations in Paragraph 1 are required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a) (1) (A) (86 Ill. Adm. Code §5000.310), are not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b) (2). To the extent an answer is required, Department admits the allegations in Paragraph 1.

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; 312-606-3212 or dhughes@hmbllaw.com; and clutz@hmbllaw.com or 312-606-3222, respectively.

**Answer:** The allegations in Paragraph 1 are required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a) (1) (A) (86 Ill. Adm. Code §5000.310), are not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b) (2). To the extent an

answer is required, Department admits the allegations in Paragraph 1.

3. Petitioner's FEIN is 06-0613103.

**Answer:** The allegation in Paragraph 3 is required by Rule 310(a)(1)(A). It is not an allegation of a material fact, and therefore does not require an answer pursuant to Rule 310(b) (2). To the extent an answer is required, Department admits the allegations in Paragraph 3.

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.

**Answer:** Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for 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 "tax laws" is vague and ambiguous and therefore the Department denies all other allegations in Paragraph 4.

#### 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.

**Answer:** Department admits the factual allegation in paragraph 5.

#### 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.

**Answer:** The allegations in Paragraph 6 are not allegations of material facts, and therefore do not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, Department admits that Petitioner is asserting jurisdiction pursuant to 35 ILCS 1010/1-1 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.

**Answer:** Paragraph 7 contains a legal conclusion, not a material allegation of fact. Whether the taxpayer timely filed its petition is a question of law to be determined by this tribunal.

Department denies any factual allegations in Paragraph 7.

### **BACKGROUND**

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

**Answer:** On information and belief, the Department admits the allegations in Paragraph 8.

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

**Answer:** On information and belief, the Department admits the allegations in Paragraph 9.

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

**Answer:** On information and belief, the Department admits the allegations in Paragraph 10.

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

**Answer:** The term "affiliates" is undefined and therefore vague and ambiguous. Department admits that Petitioner, Pepperidge Farm, Godiva, Inc., Godiva Brands, Inc., and Campbell Soup Company filed an Illinois corporate income and replacement tax return for the tax year ending July 31, 2008, as members of the same unitary business group.

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

**Answer:** Department admits the factual allegations in Paragraph 12.

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

**Answer:** On information and belief, the Department admits the allegations in Paragraph 13.

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

**Answer:** On information and belief, the Department admits the allegations in Paragraph 14.

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.

**Answer:** Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 15.

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

**Answer:** Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 16.

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.

**Answer:** Department admits the factual allegations in Paragraph 17.

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.

**Answer:** Department admits the factual allegations in Paragraph 18.

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

**Answer:** Department admits the factual allegations in Paragraph 19.

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."

**Answer:** Department admits the factual allegations in Paragraph 17.

## COUNT I

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

**Answer:** Department realleges and incorporates its Answers to paragraphs 1 through 20 as if fully set forth herein.

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)(l).

**Answer:** Paragraph 22 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act (“IITA”) (35 ILCS 5/101 et seq.) and states that such statute speaks for itself.

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

**Answer:** Paragraph 23 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act (“IITA”) (35 ILCS 5/101 et seq.) and states that such statute speaks for itself.

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).

**Answer:** Paragraph 24 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act (“IITA”) (35 ILCS 5/101 et seq.) and states that such statute speaks for itself.

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).

**Answer:** Paragraph 25 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the case law referred to in Paragraph 25 and states that such law speaks for itself.

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

**Answer:** Department denies the factual allegations in Paragraph 26.

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

**Answer:** Department denies the factual allegations in Paragraph 27.

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

**Answer:** Department denies the factual allegations in Paragraph 28.

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

**Answer:** Department denies the factual allegations in Paragraph 29.

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

**Answer:** Department denies the factual allegations in Paragraph 30.

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

**Answer:** Department denies the factual allegations in Paragraph 31.

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

**Answer:** Department denies the factual allegations in Paragraph 32.

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.

**Answer:** Paragraph 33 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department denies the allegations in Paragraph 33.

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.

**Answer:** Department denies the factual allegations in Paragraph 34.

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

**Answer:** Department denies the factual allegations in Paragraph 35.

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

- (a) finds and declares that the gain on the sale of Godiva constituted business income;
- (b) finds and declares that the gain on the sale of Godiva shall be apportioned to Illinois;
- (c) enters judgment in favor of Department and against Petitioner; and
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN,  
Attorney General, State of Illinois

By: \_\_\_\_\_

Special Assistant Attorney General

Jennifer Kieffer  
Rebecca L. Kulekowskis  
Special Assistant Attorneys General  
Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601

Telephone: (312) 814-1533  
(312) 814-3318

Facsimile: (312) 814-4344

Email: Jennifer.Kieffer@Illinois.gov  
Rebecca.Kulekowskis@Illinois.gov

DATED: February 19, 2015

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**AFFIDAVIT OF SANJAY 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 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 audited Pepperidge Farm Inc.'s Amended Illinois Corporate Income and Replacement Tax Return (Form IL-1120-X) for the tax years ending July 31, 2008.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 15 and 16.
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.

  
\_\_\_\_\_  
Sanjay Soni  
Revenue Auditor III  
Illinois Department of Revenue

Date: 2/19/2015