ILLINOIS INDEPENDENT

TAX TRIBUNAL

INTERNATIONAL BUSINESS MACHINES COPRPORATION, Petitioner,	)	
v.	)	14 TT 229
	)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)	

ORDER ON DEPARTMENT'S MOTION TO COMPEL

The Department filed a Motion to Compel dated November 19, 2015 seeking certain documents from IBM as part of the discovery process in this case. IBM filed a Response to the Department's Motion to Compel dated January 7, 2016 and the Department followed up with its Reply dated January 21, 2016.

IBM contends that the Department's discovery requests are, among other things, improper, irrelevant, and based on a fundamental misunderstanding of IBM's cost-sharing agreements with its subsidiary, WTC. This Court allowed time for IBM to produce information concerning the cost-sharing agreements to the Department in an attempt to have the parties winnow down the disputed discovery requests. Despite several submissions of information by IBM to the Department concerning the cost sharing agreements, the parties still cannot find common ground on many of the disputed discovery issues. Accordingly, each disputed discovery issue is ruled on below.

As a backdrop, the core issue in this case is whether IBM was correct in classifying its WTC subsidiary as an 80/20 business which allowed IBM to exempt WTC's income from its State of Illinois income tax calculations. A determination

must be made of WTC's payroll and property figures both within and outside the United States in order to assess whether the exemption is appropriate.[1] Consistent with this court's Order of June 30, 2015 denying IBM's summary judgment motion, that may include an analysis of salaries of IBM employees who worked in the United States on WTC matters whether or not they were listed solely on WTC's payroll as well as an analysis of property used in the United States for WTC's purposes whether or not that property was accounted for on the books of WTC or IBM.

Outstanding Discovery Requests

Interrogatory No. 3. Names, job titles, job descriptions and work addresses of IBM employees whose worked on several matters and whose (salary) expenses were reimbursed by WTC under cost sharing agreements.

IBM is to provide that information.

Interrogatory No. 4. Work location and name/position of each person who had authority to direct WTC employees.

IBM is to provide that information.

Interrogatory No. 5. Real Property locations in the U.S. where officers, directors, employees or agents of WTC worked.

The Department's request for information for "agents" of WTC is denied as being overly broad. This request, as well as all other discovery requests, will be limited where the term "agent" is used. Discovery will be limited to include information for employees of IBM and its related companies/subsidiaries and employees of WTC. Independent third party companies who perform services for WTC or provide facilities for WTC on an interim basis are excluded. Facilities which are rented pursuant to lease agreements are included. IBM has provided certain information previously for this request. IBM should provide additional information to include the types of facilities identified in the Department's Reply to the Motion to Compel.

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[1] While WTC calculations for activity within the United States are at issue, WTC's worldwide calculations (excluding the United States) are not. This court has already ruled in earlier status conferences that the Department's discovery motions will be stricken, in part, to exclude any request relating to underlying documents and records used to support those worldwide calculations. Of course, that assumes that those figures are readily available in order that both parties can make their ultimate calculations of U.S and worldwide payroll and property figures.

Interrogatory No. 6. Location of real property in U.S. where personnel of IBM performed services on behalf of WTC.

IBM has provided information about work locations for WTC officers. It should also provide information about work locations for IBM employees who conducted business activity on behalf of WTC.

Interrogatory No 7. Costs/FMV for all tangible personal property used by WTC personnel.

IBM has produced the "book value" for these items, but has not produced the original cost figures. IBM should produce the original cost figures as well as any rental/lease figures.

Interrogatory No 8. Costs/FMV for all tangible personal property used by IBM employees who performed services on behalf of WTC as described in the cost sharing agreements.

IBM is to provide this information.

Interrogatory No. 9. Description of WTC's purpose.

This appears to have been answered as no further reference is made in the Response and Reply.

Interrogatory No. 10. Location information for WTC inventory.

IBM has provided certain information concerning information about inventory located in in foreign countries. The Department is seeking further detailed information about the foreign facilities. That request will be denied.

Interrogatory No. 11. WTC's personnel and salary information.

The request is denied to the extent it asks for detailed salary information for WTC's foreign employees except that IBM should identify any additional branch facility, if any, and describe the activities that are specifically performed at each foreign facility.

Interrogatory No. 12. Identification of individual WTC foreign employees and their job duties.

This request is denied.

Interrogatory No. 13. Real and personal property.

That request will be limited to property within the United States and will not include property in other countries.

Request No. 4. Documentation relating to Interrogatory No. 3.

IBM is to provide the requested information.

Request No. 5. Access to real property.

IBM is to comply with that request and provide access to the relevant property for purposes of determining fair market value.

Request No. 6. WTC's organizational chart.

IBM has provided a flowchart (IBM-0056), but that chart does not provide any detailed information. However, IBM has replied that it does not maintain a worldwide organizational chart. This request is deemed moot.

Request No. 7. WTC Officer employment contracts.

IBM has stated that WTC officers do not have employment contracts with WTC. If any WTC officer has an employment contract with IBM or any IBM-related company, those contracts are to be turned over.

Request No. 10. W2s for all officers of WTC and other individuals paid wages under the cost sharing agreement.

IBM is to provide this information.

Request No. 11. WTC's officers' duties.

IBM states it has responded to this request and that it has no job description information for WTC officers. This request will be considered moot. However, IBM is required to answer Request No. 38, including specifically for this requested information, if applicable.

Request No. 13. Travel Logs for WTC employees who traveled to the U.S.

IBM is to provide that information. The production of travel information will be limited to trips by WTC officers and employees whose main place of employment is outside the U.S. and limited to trips to the United States.

Request No. 14. Travel and entertainment documentation.

Consistent with Request No. 13. IBM is to provide travel logs, travel vouchers and expense reports for all trips made by WTC officers and employees to the United States. IBM does not need to provide any underlying supporting documentation for those logs, vouchers and reports.

Request No. 15. Documents relating to training facilities.

IBM is to provide this information, but only as to facilities in the United States owned or rented through contracts or lease agreements by WTC or IBM or any IBM-related entity.

Request No. 16. WTC's personnel directory.

IBM states it has complied with the request through IBM _0195 and IBM _0266 through IBM_0280 and that it does not have a WTC personnel directory. IBM will not need to produce further detailed personnel information for these individuals, but to the extent the Department wishes to contact any of those individuals for depositions or for other reasons, IBM will provide contact information including office telephone numbers and office email addresses or otherwise make any of those individuals available upon a specific request by the Department.

Request No. 18. Documentation for facilities provided by IBM to WTC which were reimbursed under cost sharing agreements.

IBM is to provide this information.

Request No. 19. Documentation for purchase or rental by IBM of real or tangible personal property in the United States that was used by WTC.

IBM is to provide this information.

Request No. 23. WTC's balance sheet and income statement for tax years 2006-2008.

IBM is to provide this information.

Request No. 24. Internal audits of WTC

IBM has complied, in part, by stating it is unaware of any independent third party audit of WTC. (Second Supp. Disc. Resp. p. 22). IBM should make a similar statement for internal audits performed by WTC or IBM, or, if there were such audits, provide the documentation for the audit and provide a privilege log, if appropriate.

Request No. 26. Minutes, notes, and other documentation of WTC Board meetings.

IBM has provided Consent Resolutions and has claimed that there are no more responsive documents. If IBM is withholding documents based on a claim of privilege, it should say so. If not, this request will be considered to be complied with.

Request No. 27. Minutes, notes, and other documentation of IBM's Board meetings.

This request will be limited to those items that relate to WTC including any cost sharing agreement between WTC and IBM.

Request No. 28. Square footage information for facilities owned/leased by IBM and used by WTC.

IBM is to provide this information.

Request No. 30. Employment manuals and other employee information.

IBM has responded that there are no WTC employee manuals or other requested information. To the extent IBM's employee manuals, procedural guidelines and other IBM documents contain the requested information applicable to IBM employees who provide services to WTC, that information should be turned over.

Request No. 31. Agreements between WTC and IBM.

IBM produced some agreements between WTC and IBM and claims that sub-licensing agreements are irrelevant. Sub-licensing agreements may be relevant in determining WTC's business activities inside and outside the United States. The Department has agreed to limit its request to a representative sample and a listing of each agreement. IBM is to produce a representative sample and a listing of the sub-licensing agreements.

Request No. 32. Transfer pricing studies.

That request will be denied.

Request No. 33. Bank statements of WTC.

This request will be denied. Payroll records for WTC employees have been requested elsewhere so bank records are redundant.

Request No. 34. Documents relating to real property used by WTC in the United States.

IBM has provided W2s of WTC employees and has otherwise identified employees of WTC. That information does not identify the requested information. IBM is to comply with the request.

Request No. 35. Underlying documents for real estate transactions.

IBM is to produce this information, but the request will be limited to contracts and rental/lease agreements for facilities used by WTC employees or IBM officer/ employees performing services on behalf of WTC.

Request No. 36. Documents for tangible personal property used by WTC officer/ employees.

See Interrogatory 7, above.

Request No. 37. Documents for tangible personal property used by IBM officer/employees on behalf of WTC.

See Interrogatory No. 8, above.

Request No. 38. Document Retention Policy.

IBM is to provide the information requested as to the retention policy of various groups of documents, but limited only to those groups of documents that it must provide under this Order for which IBM claims it has no documents.

The next status conference will be held on June 2, 2016 at 1:30 p.m. by telephone.

s/ *James Conway*
JAMES M.CONWAY
Chief Administrative Law Judge

Date: May 24, 2016