



marc.simonetti@sutherland.com.

6. Respondent, Illinois Department of Revenue (“Department”), is an agency of the state of Illinois responsible for administering and enforcing the revenue laws of the state of Illinois.

### **JURISDICTION**

7. On September 24, 2014, the Department issued the Notices to IBM assessing a total balance due of \$15,641,342.00 in tax, \$6,256,536.80 in penalty, and \$6,024,387.88 in interest for the tax years ended December 31, 2007 and December 31, 2008. The Notice of Deficiency for the tax year ended December 31, 2007 asserts a total tax deficiency of \$8,693,961.00. The Notice of Deficiency for the tax year ended December 31, 2008 asserts a total tax deficiency of \$6,947,381.00. A copy of the Notices is attached as **Exhibit A**.
8. This Tribunal has original jurisdiction over all Department determinations reflected in Notices of Deficiency where the amount at issue exceeds \$15,000.00, exclusive of penalties and interest. 35 Ill. Comp. Stat. 1010/1-45.

### **BACKGROUND**

9. IBM World Trade Corporation (“WTC”) is a Delaware corporation with its headquarters in New York.
10. WTC is a wholly-owned subsidiary of IBM.
11. In 1949, IBM contributed its foreign assets and foreign securities to WTC.
12. During the audit period, WTC conducted its business operations primarily outside the United States.

13. Historically, WTC licensed from IBM the right to sublicense computer hardware technology and software technology in foreign countries.
14. IBM and WTC established the terms of the Hardware Royalty agreement in 1963.
15. IBM and WTC established the terms of the Software License agreement in 1988.
16. Pursuant to the license agreements, IBM and WTC entered into a Cost Sharing Agreement (“CSA”), effective January 1, 2007.
17. IBM is the legal owner of the intellectual property behind its hardware and software technology, while WTC is the beneficial owner for the geographic territories assigned to it under the CSA.
18. Pursuant to the CSA, WTC shares research and development costs with IBM.
19. WTC receives royalties from the controlled foreign corporations (“CFCs”) related to the sale of hardware, software, and services.
20. IBM and WTC have periodically amended these agreements to adjust the hardware royalty rates and software royalty rates according to updated transfer pricing studies.
21. The most recent software royalty transfer pricing study indicated that the royalty is within the interquartile range for comparable uncontrolled software license transactions.
22. In 2007 and 2008, WTC had twenty New York based employees in the United States.
23. In 2007 and 2008, WTC operated a network of foreign branches that employed hundreds of employees and at least fifty contractors outside the United States.
24. WTC’s branch employees performed sales distribution functions, including sales, finance, human resources, marketing, sales operations, delivery, and customer service.
25. WTC had six directors and twelve officers, some of whom were also directors or officers of IBM.

26. In 2007, WTC had everywhere payroll of approximately \$30 million and U.S. payroll of approximately \$2 million.
27. In 2008, WTC had everywhere payroll of approximately \$14 million and U.S. payroll of approximately \$2 million.
28. In 2007, WTC had everywhere property of approximately \$80 million and U.S. property of approximately \$1.2 million.
29. In 2008, WTC had everywhere property of approximately \$73 million and U.S. property of approximately \$1 million.

#### **PROCEDURAL HISTORY**

30. The Department audited IBM's income tax returns for tax years ended December 31, 2007 and December 31, 2008 ("Audit Period").
31. IBM responded to all audit information requests in a timely and sufficient manner.
32. As a result of the audit, the Department issued an assessment of additional tax because the Department disregarded WTC's statutory characterization as an excluded "80/20 Company." A copy of the workpapers is attached as **Exhibit B**.
33. The Department imputed additional property and payroll to WTC for purposes of the 80/20 test.
34. The Department provided workpapers that detailed its assumptions and calculations for the 80/20 test.
35. The Department imputed property and payroll to WTC based on unverified information from websites, such as corporationwiki.com, manta.com, and hoover.com.

36. Open source websites such as corporationwiki.com allow anyone to enter or change information on the site.
37. The Department imputed property and payroll to WTC based on several faulty and baseless assumptions.
38. The Department re-computed WTC's U.S. property fraction by calculating a rent amount determined by multiplying a fabricated number of WTC employees by a fabricated per employee rental rate.
39. The Department calculated the imputed U.S. rent based on 400 WTC U.S. employees.
40. The Department conceived the number of employees based on Internet postings on an unverified open-source website.
41. During the audit, IBM provided the Department with documentation illustrating that WTC had 20 statutory employees in the U.S.
42. The Department conceived an assumption of 250 square feet per employee (400 square feet per officer), more than 7,000 square feet of common space, and rent at \$15 per square foot, for a total imputed U.S. rent of \$13.5 million per year.
43. The Department provided no support for its rental assumptions.
44. The Department also imputed \$1.68 million per year for U.S. capital leases (vehicles) for executives and salesmen. The Department used an assumption of \$350/month per vehicles for 50 vehicles.
45. The Department provided no support for its capital lease assumptions.
46. During the audit, IBM informed the Department that WTC did not provide any vehicles to any employees, officers, or directors.

47. The Department devised U.S. compensation for WTC officers and directors by imputing 100% of their IBM compensation to WTC.
48. These officers and directors did not work exclusively for WTC.
49. The Department ignored the official list of WTC officers and directors, and their IBM W-2 wages provided to the auditor during the audit.
50. Instead, the Department grossly overestimated the officers' and directors' IBM compensation based on information from unreliable sources.
51. During the audit, IBM explained that even if the Department had the authority to impute payroll—which it does not—that the Department could not impute 100% of the officers' and directors' IBM wages to WTC.
52. The Department also imputed a portion of the IBM Chairman's compensation to WTC, even though he was not an officer, director, or employee of WTC.
53. The Department also imputed all of another individual's compensation to WTC, even though he was not an officer, director, or employee of WTC, based entirely on information from corporationwiki.com.
54. During the audit, to illustrate the Department's flawed analysis, IBM provided a calculation that used the ratio of IBM's gross receipts to WTC's gross receipts as a proxy to divide the officers' and directors' wages between the two entities.
55. Even imputing wages using the gross receipts ratio, WTC still qualified as an 80/20 Company.
56. On August 23, 2012, the Department issued a Notice of Proposed Deficiency assessing an additional liability in the amount of \$15,371,719.00 in tax, \$4,611,516.00 in penalties, and \$4,075,764.00 in interest for the Audit Period.

57. On October 18, 2012, IBM submitted a request for an Informal Conference Board review of the Notice of Proposed Deficiency, pursuant to Ill. Admin. Code tit. 86, § 215.115.
58. On June 25, 2014, the Informal Conference Board issued an Action Decision.
59. Although the Informal Conference Board sustained the Department's proposed assessment, it expressly held that the Department could not impute research and development payroll to WTC from the cost share payment to IBM for purposes of the 80/20 test.
60. On September 24, 2014, the Department issued the Notices to IBM assessing a total balance due of \$15,641,342.00 in tax, \$6,256,536.80 in penalty, and \$6,024,387.88 in interest for the tax years ended December 31, 2007 and December 31, 2008.

### **FIRST COUNT**

#### ***The Department Does Not Have the Authority to Impute Property and Payroll for Purposes of the 80/20 Test.***

61. IBM hereby restates and realleges the allegations contained in paragraphs 1 through 60 as if set forth fully herein.
62. Illinois tax law limits the composition of a unitary combined return to a water's-edge combined filing methodology. 35 Ill. Comp. Stat. 5/1501(a)(27)(A).
63. A taxpayer must compute each unitary entity's business activity to determine whether it is included in the Illinois water's-edge unitary combined group return.
64. Illinois tax law expressly provides that an 80/20 Company cannot be included in the Illinois unitary combined return. 35 Ill. Comp. Stat. 5/1501(a)(27)(A).
65. An Illinois unitary combined group does not include a unitary entity if its business activity outside the United States is 80% or more of its total business activity (commonly

referred to as an 80/20 Company). *Id.*; see also *Dover Corp. v. Illinois Dep't of Revenue*, No.98 L 50170 (Ill. Cir. Ct. Cook Jan. 14, 2000).

66. Illinois Tax Law requires the comparison of United States business activity to worldwide business activity (“Business Activity Test”). 35 Ill. Comp. Stat. 5/1501(a)(27)(A); Ill. Admin. Code tit. 86, § 100.9700(c).
67. The Business Activity Test involves two fractions—property and payroll. The numerators of the fractions represent property and payroll from sources within the United States, and the denominators of the fractions represent respective worldwide property and payroll.<sup>1</sup> *Id.*
68. Illinois regulations provide that the fractions shall be gross figures without intercompany eliminations based on the entity’s membership in any unitary business group. Ill. Admin. Code tit. 86, § 100.9700(c).
69. The taxpayer must compute each entity’s property and payroll fractions using the same methodology for both Business Activity Test and apportionment purposes. *Id.*
70. A taxpayer must average the two fractions to arrive at its business activity fraction. *Id.*
71. The property fraction is a fraction comprised of a numerator, which is the average value of the United States real and tangible personal property owned or rented and used in the trade or business during the taxable year; and a denominator, which is the average value of all the real and tangible personal property owned or rented and used in the trade or business during the taxable year. 35 Ill. Comp. Stat. 5/304(a)(1)(A). The value of property is averaged using the beginning and end of year balances. 35 Ill. Comp. Stat. 5/304(a)(1)(C).

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<sup>1</sup> Illinois tax law ultimately requires the taxpayer to subtract its business activity fraction from 1 to determine whether the taxpayer’s foreign business activity exceeds 80%.

72. The payroll fraction is a fraction comprised of a numerator, which is the total compensation paid within the United States during the taxable year; and a denominator, which is the total compensation paid everywhere during the taxable year. 35 Ill. Comp. Stat. 5/304(a)(2)(A).
73. If the employer-employee relationship does not exist, any payment for services performed does not constitute “compensation.” Ill. Admin. Code tit. 86, § 100.3100(b).
74. Illinois regulations expressly provide that “employee” includes an individual performing services only if the relationship between the person and the entity for which the person performs such services is the “legal relationship of employer and employee.” *Id.*
75. The Department does not have the authority to impute property or payroll for purposes of the 80/20 Business Activity Test.
76. The Office of Administrative Hearings expressly stated that the Department is precluded from imputing payroll from one company to another when the employees in question (including directors and officers) provide only minor services or receive no compensation from the entity, when the companies have economic substance. *Ill. Dep’t of Revenue v. Shanghai, Inc.*, IT 02-1 (Office of Admin. Hearings Feb. 7, 2002).
77. IBM employees, directors, and officers provide only minor services to WTC and receive no compensation from WTC.
78. WTC has hundreds of employees worldwide who conduct WTC’s business operations.
79. Because Illinois statutorily excludes 80/20 Companies from the unitary group return, the 80/20 Company’s income is necessarily excluded from the unitary group’s Illinois taxable income.

WHEREFORE, the Petitioner demands judgment as follows:

- (a) That WTC was properly considered an 80/20 Company during the Audit Period;
- (b) That the Department does not have the authority to impute property or payroll for 80/20 test purposes;
- (c) That the Department's Notices of Deficiency and assessment of income tax for the Audit Period in the amount of \$15,641,342.00 and all interest and penalties thereon be vacated, reversed, and set aside in its entirety; and
- (d) Such other and further relief as the Tribunal may deem just and appropriate.

## **SECOND COUNT**

### ***Even if the Department had Authority to Impute, the Department Improperly Imputed Additional Property and Payroll to WTC for Purposes of Calculating the Property and Payroll Fractions Under the 80/20 Test.***

- 80. IBM hereby restates and realleges the allegations contained in paragraphs 1 through 79 as if set forth fully herein.
- 81. Even if the Department had the authority to impute property or payroll from one entity to another for purposes of the 80/20 test—which it does not—WTC still qualifies as an 80/20 Company when accurate data is used to calculate the adjustments.
- 82. Specifically, the Department has adjusted WTC's business activity fractions by imputing additional United States property and payroll to WTC.
- 83. Even using the Department's faulty methodology to impute additional United States presence to WTC, based on WTC's actual facts WTC continues to have more than 80% of its business activity outside the United States.

#### *Property Fraction*

- 84. The Department imputed additional U.S. property to WTC for purposes of calculating the property fraction.

85. The Department calculated a rent amount based on multiplying a fabricated number of WTC employees by a fabricated per employee rental rate.
86. The Department's calculation of the imputed rent is flawed because it is based on a completely inaccurate number of WTC employees.
87. The Department relied on unverifiable and inaccurate sources—such as [corporationwiki.com](http://corporationwiki.com), [www.manta.com](http://www.manta.com), and [www.hoover.com](http://www.hoover.com), among others—to compute WTC's property fraction.
88. The Department calculated the imputed U.S. rent based on 400 WTC U.S. employees.
89. The Department conceived the number of employees based on Internet postings on an open-source website.
90. During the audit, IBM provided the Department with documentation illustrating that WTC had twenty statutory employees in the U.S.
91. The Department conceived an assumption of 250 square feet per employee (400 square feet per officer), more than 7,000 square feet of common space, and rent at \$15 per square foot, for a total imputed U.S. rent of \$13.5 million per year.
92. The Department provided no support for its rental assumptions.
93. The Department also imputed \$1.68 million per year for U.S. capital leases (vehicles) for executives and salesmen. The Department used an assumption of \$350/month per vehicles for 50 vehicles.
94. During the audit, IBM informed the Department that WTC did not provide any vehicles to any employees, officers, or directors.
95. The Department provided no support for its capital lease assumptions.

96. WTC has twenty employees in the United States as defined in Illinois tax law and regulations. *See* Ill. Admin. Code tit. 86, § 100.3100(b).
97. Even using the Department's faulty rental rate and square footage guesses, using WTC's accurate number of U.S. employees yields a foreign property fraction that exceeds 96% for the Audit Period.
98. Therefore, WTC remains an 80/20 Company, even if the Department were permitted to impute additional property to it, using the Department's methodology but with the accurate number of employees.

*Payroll Fraction*

99. The Department also imputed additional U.S. payroll to WTC for purposes of calculating the payroll fraction.
100. The Department's calculation of the imputed payroll is flawed because it is based on completely inaccurate compensation figures and alleged employees.
101. The Department devised U.S. compensation for WTC officers and directors by imputing all their IBM compensation to WTC.
102. The Department ignored the official list of WTC officers and directors, and their IBM W-2 wages that IBM provided to the auditor during the audit.
103. Instead, the Department grossly overestimated the officers' and directors' IBM compensation based on information from unreliable sources.
104. The Department also imputed a portion of the IBM Chairman's compensation to WTC, even though he was not an officer, director, or employee of WTC.

105. The Department also imputed all of another individual's compensation to WTC, even though he was not an officer, director, or employee of WTC, based entirely on information from corporationwiki.com.
  106. During the audit, IBM explained that even if the Department had the authority to impute payroll—which it does not—that the Department could not impute all the officers' and directors' IBM wages to WTC.
  107. During the audit, to illustrate the Department's flawed analysis, IBM provided a calculation that used the ratio of IBM's gross receipts to WTC's gross receipts as a proxy to divide the officers' and directors' wages between the two entities.
  108. Even imputing wages using the gross receipts ratio, WTC had a payroll fraction that is between 69% to 86% for the Audit Period.
  109. Consequently, even if the Department were permitted to impute property or payroll and the Department's methodology were correct—neither of which are true—using accurate figures WTC had 91.57% of its business activity outside of the United States in 2007 and 82.98% in 2008.
  110. Therefore, WTC is an 80/20 Company based on the express Illinois statutory requirements.
  111. Because WTC is an 80/20 Company for the entire Audit Period based on the correct calculations, it was improper for WTC to be included in IBM's unitary combined return.
- WHEREFORE, the Petitioner demands judgment as follows:
- (a) That WTC was properly considered an 80/20 Company during the Audit Period;
  - (b) That the Department does not have the authority to impute property or payroll for 80/20 test purposes;

(c) That the Department's Notices of Deficiency and assessment of income tax for the Audit Period in the amount of \$15,641,342.00 and all interest and penalties thereon be vacated, reversed, and set aside in its entirety; and

(d) Such other and further relief as the Tribunal may deem just and appropriate.

### **THIRD COUNT**

#### ***Penalties Must Be Abated for Reasonable Cause.***

112. IBM hereby restates and realleges the allegations contained in paragraphs 1 through 111 as if set forth fully herein.

113. Any penalties must be abated for reasonable cause.

114. The Department assessed penalties for the Audit Period in the amount of \$6,256,536.80.

115. Under Illinois law, no penalties shall be imposed on a taxpayer if his failure to pay tax was due to reasonable cause. 35 Ill. Comp. Stat. 735/3-8.

116. Under Illinois regulations, "the most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion." Ill. Admin. Code tit. 86, § 700.400(b).

117. A taxpayer is considered to have made a good faith effort to determine, file, and pay his tax liability if "he exercised ordinary business care and prudence in doing so." Ill. Admin. Code tit. 86, § 700.400(c).

118. A taxpayer's filing history is also considered when determining whether there is reasonable cause. Ill. Admin. Code tit. 86, § 700.400(d).

119. IBM followed the statutory requirements set forth in Illinois tax law to determine whether WTC was an 80/20 Company.

120. Pursuant to the statutory requirements, WTC is an 80/20 Company and IBM properly excluded WTC from its Illinois combined return.
121. The Department attempts a discretionary adjustment, which renders penalties inappropriate.
122. IBM made a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion.
123. IBM exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper tax liability in a timely fashion.
124. IBM has a long history of timely filing Illinois corporate income tax returns and paying Illinois corporate income tax in a timely manner.
125. The penalties imposed by the Department must be abated for reasonable cause.

WHEREFORE, the Petitioner demands judgment as follows:

- (a) That all penalties assessed by the Department be abated in full; and
- (b) Such other and further relief as the Tribunal may deem just and appropriate.

SUTHERLAND ASBILL & BRENNAN LLP  
Attorneys for Petitioner

By: 

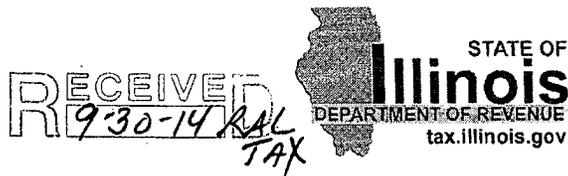
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DATED: November 21, 2014

# **EXHIBIT A**

# Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



September 24, 2014



Letter ID: CNXXX17317276328

#BWNKMGV  
#CNXX X173 1727 6328#  
INTERNATIONAL BUSINESS MACHINES CORP  
ATTN: INCOME TAX DEPT  
NORTH CASTLE DRIVE  
ARMONK NY 10504

Taxpayer ID: 13-0871985  
Reporting period: December 2007  
Total Deficiency: \$15,949,669.74  
Balance due: \$15,949,669.74

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

**If you agree to this deficiency**, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

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

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed but the total penalties and interest is 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**, 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 the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law 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 deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://tax.illinois.gov)), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

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

Sincerely,

A handwritten signature in black ink that reads "Brian Hamer".

Brian Hamer  
Director

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

(217) 785-4472

# Statement

Date: September 24, 2014  
Name: INTERNATIONAL BUSINESS MACHINES CORP  
Taxpayer ID: 13-0871985  
Letter ID: CNXXX17317276328

## Reasons for deficiency

See attached Explanation of Adjustments.

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2010, through November 8, 2010, your penalty and interest amounts may be doubled. [86 Ill. Admin. Code 520/101(b)]

## Penalties

We are imposing an additional late-payment penalty because you 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. Once an audit has been initiated, the 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 this penalty increasing to 20%. [35 ILCS 735-/3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

## Interest

Interest on tax in the amount of \$3,778,124.34 has been computed through September 24, 2014.

# Statement

Date: September 24, 2014  
Name: INTERNATIONAL BUSINESS MACHINES CORP  
Taxpayer ID: 13-0871985  
Letter ID: CNXXX17317276328

## Computation of deficiency

Reporting Period: 31-Dec-2007

Income or loss	
Federal taxable income	\$3,834,211,925.00
Net operating loss deduction	\$164,236,410.00
State Municipal and other interest excluded	\$43,077,315.00
Income tax and replacement tax deduction	\$178,436.00
Other additions	\$0.00
Income or loss	\$4,041,704,086.00
Base income or loss	
Foreign dividends subtraction	\$927,869,456.00
Total subtractions	\$927,869,456.00
Base income or net loss	\$3,113,834,630.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$0.00
Business income or loss	\$3,113,834,630.00
Apportionment formula	
Total sales everywhere	\$34,934,020,174.00
Total Illinois sales	\$1,485,046,920.00
Apportionment factor	0.042510
Business income/loss apportionable to IL	\$132,369,110.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$0.00
Base income or net loss allocable to IL	\$132,369,110.00
Net income	
Base income or net loss	\$132,369,110.00
IL net loss deduction (NLD)	\$0.00
Net income	\$132,369,110.00
Net replacement tax	
Replacement tax	\$3,309,228.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$3,309,228.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$3,309,228.00
Net income tax	
Income tax	\$6,353,717.00
Recapture of investment credits	\$0.00

# Statement

Date: September 24, 2014  
Name: INTERNATIONAL BUSINESS MACHINES CORP  
Taxpayer ID: 13-0871985  
Letter ID: CNXXX17317276328

Income tax before credits	\$6,353,717.00
Income tax investment credits	\$0.00
Net income tax	\$6,353,717.00
Refund or balance due	
Net replacement tax	\$3,309,228.00
Net income tax	\$6,353,717.00
Total net income and replacement tax due	\$9,662,945.00
Minus tax previously assessed	-\$968,984.00
Total tax deficiency	\$8,693,961.00
UPIA-5 late-payment penalty (Audit)	\$3,477,584.40
Plus interest on tax through September 24, 2014	\$3,778,124.34
Total deficiency	* \$15,949,669.74

If you intend to pay under protest, you must pay this total deficiency amount.

## Computation of balance due

Remaining amount due (or overpaid)	-\$266.37
Balance due	* \$15,949,403.37

## **Bankruptcy Information**

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

## **Taxpayer Bill of Rights**

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.



## EXPLANATION OF ADJUSTMENTS

Page 1  
07/29/2014

Taxpayer Name: International Business Machine Corp.

FEIN:

13-0871985

Audit Period: 12/31/07 12/31/08

## Adjustments

12/31/2007 12/31/2008

We have corrected your IL income tax return to reflect the proper computation using the combined filing method. Ref: IITA Section 1501(a)(27) & 502(e).

4,049,441,672 6,457,284,154

We adjusted the IL net loss deduction since Illinois law requires that losses be recomputed for only the portion attributable to IL on or after 12/31/86. Ref: IITA Sec. 207.

30,606,836

Your NOL add back did not include the NOL amount related to one of your unconsolidated company.

-30,606,836

We have corrected computational errors in the calculation of your Illinois' addition modifications. Ref: IITA Section 1501(a)(12)(A).

30,606,836

We have corrected your addition modifications to reflect the proper computation using the combined filing method. Ref: IITA Section 1501(a)(27) & 502(e).

-454,266,286 -381,974,553

You reported Bonus Depreciation adjustment as net whereas, the Department requires to add back the Federal amount and deduct current dep. as shown on IL-4562.

202,929,413

We have corrected your subtraction modifications to reflect the proper computation using the combined filing method. Ref: IITA Section 1501(a)(27) & 502(e).

794,246,017 4,085,484,133

We have corrected computational errors in the calculation of the sales factor. Ref: IITA Section 304(a)(3)(A).

Everywhere

Illinois

34,067,266 -611,106

We have corrected your sales factor to reflect the proper computation using the combined filing method. Ref: IITA Section 1501(a)(27) & 502(e).

Everywhere

Illinois

730,134,954 1,196,676,127



# Notice of Overpayment Adjustment



September 24, 2014



Letter ID: L0836666336

Account ID: 16229-31968

FEIN: 13-0871985

Reporting Period: December 2009

INTERNATIONAL BUSINESS MACHINES CORP  
ATTN: INCOME TAX DEPT  
NORTH CASTLE DRIVE  
ARMONK NY 10504

We changed the amount of overpayment that you requested be applied to your next year's Illinois estimated tax, or the amount that you requested be refunded to you, because we made an adjustment to your return or you were assessed penalty and interest.

Please review the Account Status Section.

Penalties for any late payment of estimated taxes that might result because we applied this overpayment to another liability, may be avoided by following the instructions below.

If the final estimated payment installment date for next year's estimated taxes has not passed, you must pay back the amount we applied to another liability

- within 30 days of the date of this notice, or
- before the next estimated tax installment due date, whichever is later.

If the final estimated payment installment date for next year's estimated taxes has passed, you must pay back the amount we applied to another liability

- by the original due date of your return, without regard to any extended due date, or
- within 30 days of the date of this notice, whichever is later.

If you disagree with the amount identified or have any questions about the application of your Illinois tax overpayment, call the phone number provided in the Account Status Section.

**Note:** If you are currently under the protection of the Federal Bankruptcy Court, please contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligation to file tax returns.

### Account Status Section

Total overpayment from: Form IL-1120, Corporation Income and Replacement Tax Return \$4,764,335.78

Amount offset to the following: Phone number

Total offset amount: \$0.00

Previous amount of credit carryforward: \$0.00

Remaining overpayment: \$4,764,335.78

Amount applied to 12/10 estimated payments 1 800 732-8866 \$4,764,335.78

Refund amount \$0.00

Note: You will not receive a refund check if your refund amount is less than \$1.

# Notice of Overpayment Adjustment



September 24, 2014



Letter ID: L1359621856

Account ID: 16229-31968

FEIN: 13-0871985

Reporting Period: December 2010

INTERNATIONAL BUSINESS MACHINES CORP  
ATTN: INCOME TAX DEPT  
NORTH CASTLE DRIVE  
ARMONK NY 10504

We changed the amount of overpayment that you requested be applied to your next year's Illinois estimated tax, or the amount that you requested be refunded to you, because we made an adjustment to your return or you were assessed penalty and interest.

Please review the Account Status Section.

Penalties for any late payment of estimated taxes that might result because we applied this overpayment to another liability, may be avoided by following the instructions below.

If the final estimated payment installment date for next year's estimated taxes has not passed, you must pay back the amount we applied to another liability

- within 30 days of the date of this notice, or
- before the next estimated tax installment due date, whichever is later.

If the final estimated payment installment date for next year's estimated taxes has passed, you must pay back the amount we applied to another liability

- by the original due date of your return, without regard to any extended due date, or
- within 30 days of the date of this notice, whichever is later.

If you disagree with the amount identified or have any questions about the application of your Illinois tax overpayment, call the phone number provided in the Account Status Section.

**Note:** If you are currently under the protection of the Federal Bankruptcy Court, please contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligation to file tax returns.

### Account Status Section

Total overpayment from: Form IL-1120, Corporation Income and Replacement Tax Return		\$22,892.78
Amount offset to the following:	Phone number	
Total offset amount:		\$0.00
Previous amount of credit carryforward:		\$0.00
Remaining overpayment:		\$22,892.78
Amount applied to 12/11 estimated payments	1 800 732-8866	\$22,892.78
Refund amount		\$0.00

Note: You will not receive a refund check if your refund amount is less than \$1.

# Taxpayer Statement

RECEIVED  
9-30-14 RAL TAX



September 25, 2014

TDD 1 800 544-5304



Letter ID: CNXXX13183411362

Account ID: 16229-31968

FEIN: 13-0871985

#BWNKMGV  
#CNXX X131 8341 1362#  
INTERNATIONAL BUSINESS MACHINES CORP  
ATTN: INCOME TAX DEPT  
NORTH CASTLE DRIVE  
ARMONK NY 10504

This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

## IL Business Income Tax

You have available credits of \$25,182.06

Account ID: 16229-31968

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2011	15,359,731.00	10,297.87	-	-	(15,395,210.93)	(25,182.06)
31-Dec-2012	24,846,300.00	628,561.81	10,011.49	-	(24,390,090.85)	Not Included*

\* We have received correspondence for this period and it is currently under review.

SOA

P-000189

If necessary, respond to:

ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19004  
SPRINGFIELD IL 62794-9004



# Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return

RECEIVED  
9-30-14  
REAL  
TAX



September 24, 2014



Letter ID: CNXXX15295657121

#BWNKMGV  
#CNXX X152 9565 7121#  
INTERNATIONAL BUSINESS MACHINES CORP  
ATTN: INCOME TAX DEPT  
NORTH CASTLE DRIVE  
ARMONK NY 10504

**Taxpayer ID:** 13-0871985  
**Reporting period:** December 2008  
**Total Deficiency:** \$11,972,596.94  
**Balance due:** \$11,972,596.94

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. Illinois law requires that we notify you of this deficiency and your rights.

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

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

- If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed but the total penalties and interest is 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, 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 the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law 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 deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- In any case, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://tax.illinois.gov)), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

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

Sincerely,

Brian Hamer  
Director

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

(217) 785-4472

# Statement

Date: September 24, 2014  
Name: INTERNATIONAL BUSINESS MACHINES CORP  
Taxpayer ID: 13-0871985  
Letter ID: CNXXX15295657121

## Reasons for deficiency

See attached Explanation of Adjustments.

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2010, through November 8, 2010, your penalty and interest amounts may be doubled. [86 Ill. Admin. Code 520/101(b)]

## Penalties

We are imposing an additional late-payment penalty because you 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. Once an audit has been initiated, the 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 this penalty increasing to 20%. [35 ILCS 735-3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

## Interest

Interest on tax in the amount of \$2,246,263.54 has been computed through September 24, 2014.

# Statement

Date: September 24, 2014  
Name: INTERNATIONAL BUSINESS MACHINES CORP  
Taxpayer ID: 13-0871985  
Letter ID: CNXXX15295657121

## Computation of deficiency

Reporting Period: 31-Dec-2008

Income or loss	
Federal taxable income	\$9,437,765,868.00
Net operating loss deduction	\$160,891,249.00
State Municipal and other interest excluded	\$9,882,623.00
Income tax and replacement tax deduction	\$5,303,711.00
Illinois bonus depreciation addition	\$1,091,981,552.00
Other additions	\$0.00
Income or loss	\$10,705,825,003.00
Base income or loss	
Foreign dividends subtraction	\$6,633,979,077.00
Illinois bonus depreciation subtraction	\$214,021,623.00
Total subtractions	\$6,848,000,700.00
Base income or net loss	\$3,857,824,303.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$0.00
Business income or loss	\$3,857,824,303.00
Apportionment formula	
Total sales everywhere	\$35,052,333,144.00
Total Illinois sales	\$1,540,893,009.00
Apportionment factor	0.043960
Business income/loss apportionable to IL	\$169,589,956.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$0.00
Base income or net loss allocable to IL	\$169,589,956.00
Net income	
Base income or net loss	\$169,589,956.00
IL net loss deduction (NLD)	\$0.00
Net income	\$169,589,956.00
Net replacement tax	
Replacement tax	\$4,239,749.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$4,239,749.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$4,239,749.00
Net income tax	

# Statement

Date: September 24, 2014  
Name: INTERNATIONAL BUSINESS MACHINES CORP  
Taxpayer ID: 13-0871985  
Letter ID: CNXXX15295657121

Income tax	\$8,140,318.00
Recapture of investment credits	\$0.00
Income tax before credits	\$8,140,318.00
Income tax investment credits	\$69,541.00
Net income tax	\$8,070,777.00
Refund or balance due	
Net replacement tax	\$4,239,749.00
Net income tax	\$8,070,777.00
Total net income and replacement tax due	\$12,310,526.00
Minus tax previously assessed	-\$5,363,145.00
Total tax deficiency	\$6,947,381.00
UPIA-5 late-payment penalty (Audit)	\$2,778,952.40
Plus interest on tax through September 24, 2014	\$2,246,263.54
Total deficiency	* \$11,972,596.94

If you intend to pay under protest, you must pay this total deficiency amount.

## Computation of balance due

Remaining amount due (or overpaid)	-\$500.00
Balance due	* \$11,972,096.94

## **Bankruptcy Information**

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

## **Taxpayer Bill of Rights**

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.



EXPLANATION OF ADJUSTMENTS

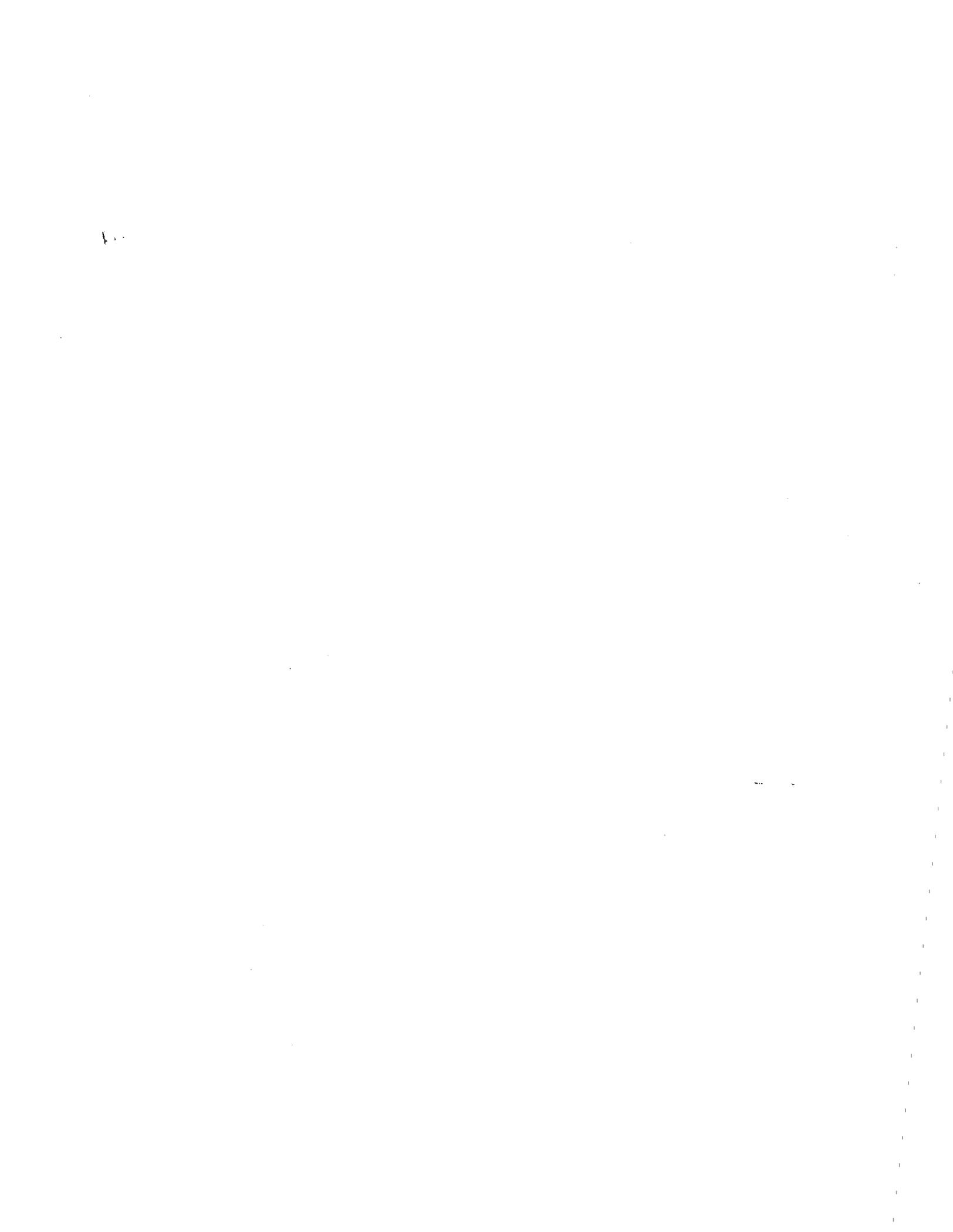
Taxpayer Name: International Business Machine Corp.  
 FSIN:  
 Audit Period: 12/31/07 12/31/08

13-0871985

Adjustments

12/31/2007 12/31/2008

<p>We have corrected your IL income tax return to reflect the proper computation using the combined filing method. Ref: IITA Section 1501(a)(27) &amp; 502(e).</p>	<p>4,049,441,672</p>	<p>6,457,284,154</p>
<p>We adjusted the IL net loss deduction since Illinois law requires that losses be recomputed for only the portion attributable to IL on or after 12/31/86. Ref: IITA Sec. 207.</p>		<p>30,606,836</p>
<p>Your NOL add back did not include the NOL amount related to one one of your unconsolidated company.</p>		<p>-30,606,836</p>
<p>We have corrected computational errors in the calculation of your Illinois' addition modifications. Ref: IITA Section 1501(a)(12)(A).</p>		<p>30,606,836</p>
<p>We have corrected your addition modifications to reflect the proper computation using the combined filing method. Ref: IITA Section 1501(a)(27) &amp; 502(e).</p>	<p>-454,266,286</p>	<p>-381,974,553</p>
<p>You reported Bonus Depreciation adjustment as net whereas, the Department requires to add back the Federal amount and deduct current dep. as shown on IL-4562.</p>		<p>202,929,413</p>
<p>We have corrected your subtraction modifications to reflect the proper computation using the combined filing method. Ref: IITA Section 1501(a)(27) &amp; 502(e).</p>	<p>794,246,017</p>	<p>4,085,484,133</p>
<p>We have corrected computational errors in the calculation of the sales factor. Ref: IITA Section 304(a)(3)(A).</p>	<p>Everywhere Illinois</p>	<p>34,067,266 -611,106</p>
<p>We have corrected your sales factor to reflect the proper computation using the combined filing method. Ref: IITA Section 1501(a)(27) &amp; 502(e).</p>	<p>Everywhere Illinois</p>	<p>730,134,954 1,196,676,127</p>



# **EXHIBIT B**

Sch X-1  
A.M. 8/23/12

IBM World Trade Corporation  
1 Orchard Road in Armonk, NY

13-1602820

Projected rent expense

	Number of Employees	Sq Foot Needed	cost/sq ft \$15/sq ft
You need approximately 250 sq feet per employee (1)(a)			
Number of employees at IBM World Trade Corp (2)	400	100,000	1,500,000
Approx. officers space 400 sq ft/officer (1)(b)	14	5,600	84,000
Reception Area (1) ©		300	4,500
2 Conference Rooms (25-30 sq ft/person) (30 sqft per 12 individuals)		1,080	16,200
Storage Rooms to store computers & Equip		3000	45,000
Parking Space for WTC employees		3000	45,000
<b>Total imputed rent expense</b>			<b>1,694,700</b>

**Footnotes:**

a. IBM World Trade Corporation has various divisions and disregarded entities. IBM World Trade Corp Europe/Middle East/Africa This division is headquartered in Armonk. Approximate employees at this location is 400. See attached Exhibit 2

b. IBM World Trade Corporation has 14 executives at Armonk location. (Source: wiki.com getting the info from Dun & Bradstreet- Exhibit 3

(1) approx. square feet needed per employee estimate - (Source: www.mbfincial.sbresources.com) See copy attached Exh. 1

(2) Number of employees at 1 Orchard Road Armonk, NY location (source: www.manta.com) See copy attached Exhibit 2

(3) Cost to rent office space in westchester business park, Armonk NY is \$15/sq ft. (Source: www.showcase.com Exhibit 4)

**Additional sources confirming number of Employees at Armonk location:**

(5) www.hoovers.com/IBM World Trade Corp.: Lists 444 Executives at this location.

(6) www.powerprofiles.com IBM World Trade Corp: Estimated employees at this location 400

(7) Taxpayers response to one IDR-4 dated July 25, 11. (Enclosed a copy as Exhibit 7)

A.M. 8/23/12

U.S. F.Assets (state by state)	12/31/2007			
	Property Ratio			
	Beginning	Ending	Total	Average
Inv. Dep Assets & Land	752,202	1,672,749	2,424,951	1,212,476
Add cap.rent exp. (1,694,700*8 Sch X-1)	0			13,557,600 (*)
Add Est.cap. leases for Exec & salesmen				1,680,000 (a)
<b>Total U.S. Property</b>	<b>752,202</b>	<b>1,672,749</b>	<b>2,424,951</b>	<b>16,450,076</b>

(\*) Capitalized Rent Exp. (See imputed rent exp detail on Sch X-1)

(a) Conservative figure: (Average : \$350/month per car times 50 cars times 8 to capitalize)

Worldwide F.A.(U.S. 1120)	Beginning	Ending	Total	Average	
Inv. Dep. Assets & Land	85,097,853	74,674,101	159,771,954	79,885,977	US 1120 Balance Sheet
Add Cap. Rent Exp. US 1120 Line 16 - 1,507,812				12,062,496	
<b>Add Total Property including Imputed Rent Exp.</b>				<b>16,450,076</b>	
Less: Inv Dep Assets & Land included in U.S. that's included in Everywhere				(1,212,476.00)	
<b>Total Property Everywhere</b>				<b>107,186,073</b>	
<b>U.S. Property percentage</b>				<b>0.153472135</b>	

U.S. Payroll

U.S. Payroll Provided by TP (Apportionment data by location)  
 Add: Salaries & Wages for Officers of WTC & prorated portion of the Chairman of IBM  
**Total U.S. Imputed Payroll**

Version #1 (Includes prorated %age of IBM)

**Payroll Ratio**

2,049,242  
 29,781,052 Sch X-2  
**31,830,294 (x)**

Version #2 (without prorating IBM's Officers)

**Payroll Ratio**

2,049,242  
 16,998,370  
**19,047,612**

Everywhere Payroll

Total payroll per U.S. 1120 Line 13  
 Less: U.S. payroll included above on Line 13 of U.S. 1120  
 Add: Total U.S. Imputed payroll & officers comp.  
**Grand Total of Payroll Everywhere**

Version #1 (Includes prorated %age of IBM)

U.S. 1120 L 1: 30,682,327  
 See above (2,049,242)  
 see above (x) 29,781,052  
**58,414,137**

Version #2 (without prorating IBM's Officers)

30,682,327  
 (2,049,242)  
 16,998,370  
**45,631,455**

U.S. Payroll percentage

0.544907

0.41742285

U.S. Property percentage from above

0.153472

0.153472

Total of U.S. payroll &amp; U.S. property

0.698379

0.570894985

Average U.S. Ratio

0.3491895

0.285447493

**Property Ratio**

U.S. F.Assets (state by state)	Beginning	Ending	Total	Average	
Inv. Dep Assets & Land	1,672,749		338,379	2,011,128	1,005,564
Add cap.rent exp. (see sch X-1 for detail)		0			13,557,600 (*)
Add Est.cap. leases for Exec & salesmen					1,680,000 (a)
<b>Total U.S. Property</b>					<b>16,243,164</b>

Note: Auditor used 2007 imputed amounts. In essence 2008 can be higher.

(\*) Capitalized Rent Exp. (See imputed rent exp detail on Sch X-1)

(a) Conservative figure: (Average : \$350/month per car times 50 cars times 8 to capitalize)

Worldwide F.A.(U.S. 1120)	Beginning	Ending	Total	Average
Inv. Dep. Assets & Land	74,674,101	71,491,740	146,165,841	73,082,921 US 1120 B.S.
Add Cap. Rent Exp. US 1120 Line 16 (1,635,880*8)				13,087,040 US Line 16
Add Total U. S. prop. Including imputed amount				16,243,164
Less: Inv Dep Assets & Land included in U.S. that's included in Everywhere				(1,005,564)
<b>Total Property Everywhere</b>				<b>101,407,561</b>

**Property Factor: US. Property/Everywhere Property for 80/20 test** **0.160177**

U.S. Payroll
U.S. Payroll provided by the taxpayer and/or booked on WTC
Add: Sal. & Wages for Officers of WTC & prorated Portion of IBM's Chairman
<b>Total U.S. Payroll</b>

Version #1 (Includes prorated %age of IBM Version #2 (without prorating IBM's Officers))		
Payroll Ratio		Payroll Ratio
1,912,319		1,912,319
35,515,598	Sch X-2	21,380,000
<b>37,427,917</b>		<b>23,292,319</b>

Everywhere Payroll
Total payroll claimed on U.S. 1120
Less: U.S. payroll included in the above amt.
Add: Salaries/wages/compensation from above
<b>Total Payroll Everywhere</b>

Version #1 (Includes prorated %age of IBM Version #2 (without prorating IBM's Officers))		
14,992,484		14,992,484
<b>(1,912,319)</b>		<b>(1,912,319)</b>
35,515,598	Sch X-2	21,380,000
<b>48,595,763</b>		<b>34,460,165</b>

U.S. Payroll Ratio
Add: U.S. Property Ratio
<b>Total U.S. property &amp; payroll Factor</b>

<b>0.770189</b>
0.160177
<b>0.930366</b>

**Average U.S. property**  
U.S. property

**0.465183**  
**Greater than 20%**

**0.418049**  
**Greater than 20%**

Sch X-2 **Officers of IBM World Trade Corporation**

Source: This list of officers is provided by IBM Co. Representative

Name of Officers	Title	Elected	Resigned	D 2007 Salary	2008 Salary
1 Joyce A Bergman (b)	Assistant Secretary	6/30/1989		1,000,000	1,020,000
2 Andrew Bonanzi (b)	Secretary	6/30/1997		500,000	520,000
3 Harsh Chugh (b)	Assistant Treasurer	4/1/2008	11/20/2009		250,000
4 Douglas T. Elix (a) ©	Chairman, President & CE	5/12/2004	4/1/2008	6,498,370	1,750,000
5 John P. Gianukakis (b)	Controller	9/30/2005	2/2/2010	400,000	415,000
6 Jesse J. Greene (b)	Treasurer	5/10/2002	10/3/2007	600,000	
7 David L. Johnson (b)	VP Corp. Development	4/23/2001	6/11/2009	6,500,000	7,500,000
8 Franklin R. Kern III (b)	Chairman, President & CE	4/1/2008	6/11/2009		6,825,000
9 Martin Schroeter (b)	Assistant Treasurer	6/29/2007	10/3/2007	350,000	
Martin Schroeter	Controller	2/2/2010	4/26/2010		
Martin Schroeter	Treasurer	10/3/2007			400,000
10 Maureen Sladek (b)	VP	11/14/2008			1,250,000
12 Gerard Vilcot (b)	Controller	10/31/1994		750,000	1,000,000
13 Daniel M Zuchelli (b)	Assistant Treasurer	5/23/2005	4/1/2008	400,000	450,000
<b>Total</b>				<b>16,998,370</b>	<b>21,380,000</b>

(a) was derived from IBM Notice of 2008 & 2009 Annual Meeting & Proxy Statement 2007 & 2008 Summary compensation

(b) Estimate based on his or her title & years of service with Company.

© Used \$7 million prorated for 3 months. The balance posted to Franklin Kern, Chairman who replaced Elix

**Additional Officers listed on Internet : [Http://www.corporationwiki.com/New York](http://www.corporationwiki.com/New York)**

1 Samuel J. Palmisano	Chairman of the Board, CEO	(*) Prorated 25	6,282,682	7,135,598
2 Lucio Stanca	President	(b)	6,500,000	7,000,000
3 Greg Watson	Manager			
4 Robin Wilner	Manager			
5 Alan Ganek	V.P.			
6 John Jackson	V.P.			
7 Abby Konstamm	V.P.			
8 Robert Woods	V.P.			
9 Bruce Harreld	General Manager			
10 Grace Suh	General Manager			
11 Phil Russo	Branch Manager			
12 Tina Moon	Corporate Counsel/Legal			
13 Michelle Park	Corporate Counsel/Legal			
<b>Grand Total</b>			<b>29,781,052</b>	<b>35,515,598</b>

(\*) was derived from IBM Notice of 2008-2009 Annual Meeting & Proxy Statement - 2007 & 2008 Summary compensation

Following Officers Listed hereafter are on the internet; Power profiles.com

**1 IBM World Trade Europe/Middle/East/Africa Corporation (This is a branch of IBM WTC headquartered in Armonk)**

2 Lucio Stanca	President
3 Librio Robeli	
Joyce John	Chief Finance Officers

Estimated Employees at the New York Location 400 employees.

Officers Lited on the internet: Company profile from Hoover's

1 Samuel J. Palmisano	Chairman of the Board, CEO
2 Kenneth Lynch	President
3 Owen Cropper	Owner Human Resource Exec.

**444 Executives listed for IBM World Trade Corporation's Armonk, NY Location**

WTC is composed of various divisions: Several of the divisions are headquartered in Armonk NY: Div 50, 90,93

Taxpayer's response to IDR#4 question #9 stated : Revenue and expense booked in these divisions are attributable to activities conducted outside the U.S. Mgmt of these div. occur both in the US and non US. Example, Div 50, the employees work in Armonk, NY

The group plans & forecasts volumes by brand and product, schedules and expedites orders, monitors and tracks order status and measures inventory. The hardware products are sold to Asia Pacific Countries

# **EXHIBIT C**

<b>Tax Year</b>	<b>2007</b>	<b>2008</b>
Property Fraction	96.52%	96.52%
Payroll Fraction	86.62%	69.45%
Business Activity Fraction	91.57%	82.98%