

ILLINOIS INDEPENDENT TAX TRIBUNAL

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

**DEPARTMENT’S REPLY TO PETITIONER’S RESPONSE
TO DEPARTMENT’S MOTION TO COMPEL**

NOW COMES the Department of Revenue (“Department”), by its duly authorized representatives, Special Assistant Attorneys General, Susan Budzileni, Jennifer Kieffer and Sean Cullinan, pursuant to Illinois Supreme Court Rules 213 and 214, and replies to Petitioner’s (“IBM” or “Petitioner”) Response of Department’s Motion to Compel as follows:

1. The Department files this reply in order to limit the discovery requests at issue at the Hearing on its Motion to Compel to those addressed herein. Department hereby incorporates its arguments in the Motion to Compel, and therefore, does not waive any argument made in the Motion to Compel.

Interrogatory No. 3. Interrogatory 3 requests “the names,... job titles, job descriptions, and work addresses of the individuals that comprise the \$1,168,364,321 for 2007 and \$1,147,475,232 for 2008 of wages paid by WTC to IBM under the Shared Services Cost Sharing Amendments.” In its response to the Department’s Motion to Compel, the Petitioner asserts that the Department misunderstood the audit adjustment regarding how much “wages” comprised WTC’s ultimate cost sharing payment to IBM for the years at issue (\$1,168,364,321 for 2007

and \$1,147,475,232 for 2008, respectfully). To arrive at these figures, the auditor indeed utilized the research and development credit wages and divided it by 50% because, like in this litigation, Petitioner refused to provide the documentation of the cost sharing payments to the auditor at her request. The Cost Sharing Agreement specifically references research and development as a shared cost, so, the auditor utilized a reasonable proxy given the lack of cooperation.

The Cost Sharing Agreement was an arrangement entered into by two related entities. Petitioner cites no authority that would preclude the Department from investigating the amount of property/payroll reimbursed by WTC to IBM under such arrangement. Moreover, the Department is not bound by any language in the July 25, 2014 ICB Action Decision and Petitioner cites no legal authority to support such a conclusion. Only the audit bureau is bound by the ICB Action Decision. 86 Ill. Admin. Code 215.130(g) (“g) Upon conclusion of the in-person conference, the ICB panel will issue a final Action Decision to the taxpayer and/or the taxpayer's representative and to the Audit Bureau, where the terms of the final Action Decision shall be implemented.”). Had Petitioner accepted the ICB Action Decision, the Action Decision would stand and this protest would not have ensued. 86 Ill. Admin. Code ¶ 215.125(e) (“e) An approved Action Decision setting forth the conditions of the proposed disposition submitted in accordance with this Section becomes effective when executed by the taxpayer or its representative.”). But because Petitioner did not accept the ICB Action Decision, the Department is not bound by the Action Decision.

One reason we filed our Motion to Compel was to seek responses to facts covered in the Cost Sharing arrangement, specifically:

Interrogatory Number 3: The names, titles, job descriptions and work addresses of those employees reimbursed under the Cost Sharing arrangements;

Interrogatory Number 8: The cost, lease amount or fair market value (as applicable) for all items of tangible personal property used by any officer, director, employee, or agent of IBM in performing services described in The Shared Services Cost Sharing arrangements;Request No. 4: Documents containing the names, titles, job descriptions and work addresses of those employees reimbursed under the Cost Sharing arrangements asked for in Interrogatory No. 3;

Request No. 10: Form W-2 for the Tax Years at Issue for all officers of WTC and all domestic individuals reimbursed under the Cost Sharing arrangements;

Request No. 18: The purchase contracts, leases, subleases, assignments, and agreements,” “evidencing procurement of office, warehouse, facilities or other storage space provided by IBM to WTC [to] individuals that comprise all or part of the . . . wages reimbursed by WTC to IBM” under the cost sharing agreements.

These facts will enable the Department to determine the correct amount of wages and property reimbursed by WTC for activities covered in the Cost Sharing arrangement. We are entitled to know these numbers in preparing for trial. Instead of providing the information, Petitioner continues to maintain it is an improper inquiry because they are not “WTC wages.” These arguments have been addressed in both our Motion to Compel and this Tribunal’s June 30, 2015 Order on Summary Judgment.

Interrogatory No. 4. This interrogatory requests that Petitioner provide the job title, duties/job description, work location (address, city, state, zip code) of each WTC U.S. employee and provide the name of each person who had authority to direct the manner of each employee’s performance of work, including hiring and termination of employment for each employee of WTC. Petitioner answers this interrogatory by referencing Bates number IBM_0001 and IBM_0234 through IBM_0265. These documents do not provide the name and position of each

person who had authority to direct each WTC employee's work. These supervisory activities constitute U.S. business activity, similar to the development, protection and quality control of the intellectual property in Zebra Technologies Corp. v. Topinka, 344 Ill. App. 3d. 474 at 483 (1st Dist. 2003) (hereinafter "*Zebra*").

Interrogatory No. 5. In Interrogatory No. 5, the Department seeks each real property location (address, city and state) in the United States where an officer, director, employee or agent of WTC performed services, including training, on behalf of WTC. Petitioner has identified four U.S. locations where its employees worked: New Orchard Road, Armonk, NY, 590 Madison Ave., New York, NY, (IBM_0195), 1 North Castle, Armonk, NY, 10504 and Two Jerico Plaza, Jericho NY 11753 (IBM_0234). Petitioner has yet to identify any of the following facilities: training, storage, cafeterias, parking lots, health/exercise, conference rooms, lobbies, manufacturing plants, convention centers or hotel ballrooms.

Interrogatory No. 6. The Department, in Interrogatory No. 6, asked for the location of real property (address, city and state) where an officer, director, employee or agent of Petitioner/IBM performed services on behalf of WTC. Petitioner has failed to provide a response as to location(s) of real property where an IBM officer, employee, director and agent performed services on behalf of WTC.

Interrogatory No. 7 requests "the cost, lease amount or fair market value (as applicable) for all items of tangible personal property used by any officer, director, employee, or agent of WTC in performing services on behalf of WTC in the United States, including territories." Petitioner did not appropriately respond to the cost of tangible personal property owned or leased by WTC in the US in that it only provided book values after accounting for depreciation. Per Section 100.3350(e) of the administrative rules, property owned shall be valued at its original

costs . . . and will not reflect any federal adjustments. Section 100.3350(f) provides that property rented by the person is valued at eight times the net annual rental rate. 86 Ill Admin. Code 100.3350(e),(f).

Interrogatory No. 8 requests “the cost, lease amount or fair market value (as applicable) for all items of tangible personal property used by any officer, director, employee, or agent of IBM in performing services as described in The Shared Services Cost Sharing Amendments on behalf of WTC in the United States, including territories.”

Petitioner provided no information about the cost, lease amount or fair market value of tangible personal property used by IBM on behalf of WTC in the U.S. Regarding the Cost Sharing Amendments, *see* arguments in Interrogatory No. 3 made in this Reply *supra*.

Interrogatory No. 10 Interrogatory No. 10 seeks “the address, city and state and country” where inventory was stored. The inquiry is relevant to the property factor. The documents provided do not provide the address, city or, for foreign facilities, the country where inventory is stored. The documents only show the U.S. state and “foreign” total book value of inventory stored, not the specific location of the inventory. Department requires the address, city and state of the inventory storage facility to acquire more detailed information regarding the facility – the legal owner, the real estate value, the rent or lease payments for use of the facility, etc.

Interrogatory No. 11. This is an interrogatory - not a document request - which asks for Petitioner to list the WTC locations, and the activities, employees, and salaries of employees and to provide the job description for each employee title. Petitioner stated that “WTC operated a network of foreign branches” “in 12 jurisdictions.” Second Supplemental Response to Interrogatory 12 and Interrogatory 9, respectively. However, Petitioner has identified only 10

foreign branches: Sri Lanka, Trinidad, Jamaica, Barbados, Netherlands Antilles, Bahamas, Suriname, Macau, Brunei, and Egypt. (IBM_0266 to 0280). Petitioner must identify the remaining two branches and provide the requested information for those branches. Job titles on IBM_0266 through IBM_0268 and IBM_0276 provide only acronyms, not actual titles. Additionally, Petitioner has not provided the job descriptions/duties, salaries and activities of the foreign employees or “describe[d] the activities of each division,” as requested. The Department has the right to know the day to day activities and specific salaries of each employee to verify everywhere payroll. Petitioner vaguely references “foreign privacy laws” without any specific cite. However, the parties have entered a protective order to address concerns regarding disclosure of “Information prohibited from disclosure by statute; ... Personal identity information (i.e. social security numbers, dates of birth); and Personnel or employment records of a person who is not a party to the case.” Agreed Protective Order, page 1.

Interrogatory No. 12. In Interrogatory 12, the Department asks Petitioner to identify each person that performed the delineated activities for WTC. Those activities are:

- a. **Solicitation of prospective customers;**
- b. **Place where purchase orders are received;**
- c. **Finalizing and signing the final agreement (i.e. sales contract, license, etc);**
- d. **Financing, credit check and approval;**
- e. **Preparation of customers' account information (including account statements, sales invoices);**
- f. **Preparing, packing, carting, and shipping products to customers, and;**
- g. **Maintenance of accounting services (including account receivables/payables and preparation of financial statements and tax forms (including Form 1120 and its source documentation)).**

The activities are relevant because they could involve interplay with IBM and its affiliates and these facts may support a “form over substance argument.” See 6/30/15 Order on Summary Judgment, page 6 citing *Zebra*. Supreme Court Rule 213(e) allows for the production of documents instead of a written response to the interrogatory posed, but only “when the answer

to an interrogatory may be obtained from documents in the possession or control of the party on whom the interrogatory was served.” Ill. Sup. Ct. R. 213(e). Here, the documents do not provide the person(s) who performed the defined activities.

Interrogatory No. 13. In Interrogatory 13, Department asked Petitioner to “Identify the real property and tangible personal property (by manufacturer, model number and date placed in service) WTC owned, leased or used during the Tax Years at Issue and state the location of that property (street address, city, state and country).” Petitioner stated in its Second Supplemental Response that “Petitioner is unable to locate information at this level of detail. Petitioner will supplement its response if any additional information becomes available.” It is disingenuous for Petitioner to claim that no one knows the real property locations where its \$1.6M of inventory was stored before being shipped to customers. There may be no document that provides all the information, however, this is an interrogatory, which requires a written response.

Request No. 4. Request No. 4 seeks documentation evidencing Petitioner’s answer to Interrogatory 3, which requested “the names,... job titles, job descriptions, and work addresses of the individuals that comprise the \$1,168,364,321 for 2007 and \$1,147,475,232 for 2008 of wages paid by WTC to IBM under the Shared Services Cost Sharing Amendments.” Please *see* the arguments made in Interrogatory No. 3 in this Reply *supra*.

Request No. 5. In Request 5 the Department requests that Petitioner provide access to the U.S. real estate where the directors, officers, and employees of WTC performed their work duties, and the U.S. real property where directors, officers, and employees of IBM performed services on behalf of WTC during the years at issue. Department seeks access to this real estate in order to determine the value of U.S. real estate used by WTC during the tax years. U.S. real property is one element of the property factor numerator. 86 Ill. Adm. Code §100.3350(d).

Access is necessary to determine the reasonable market rental rate for the property used, free of charge, by WTC.

Request No. 6 In Request 6., Department requests a copy of Petitioner's organizational chart. Petitioner produced a rudimentary diagram in response to Request No. 6. IBM_0056. However, this diagram is deficient because it only outlines the parent, WTC and WTC's subsidiary categories ("Branches," "CFCs," and "LLCs"). Petitioner has not produced an organizational chart that shows the structure of the organization and illustrates relationships between persons/entities in the organization.

Request No. 7. This request asks for all "employment contracts for all officers of WTC in effect during the Years at Issue." The Request is not restricted to employment contracts between WTC officers and WTC. Rather all employment contracts are requested – no matter with whom the WTC officer contracted. Petitioner has not provided any employment contracts.

Request No. 10. Request 10 asks Petitioner to "Produce Form W-2 for the Tax Years at Issue for all officers of WTC and all domestic individuals that comprise all or part of the \$1,168,364,321 for 2007 and \$1,147,475,232 for 2008 of wages paid by WTC to IBM under the IBM World Trade Corporation Software Intangibles and Shared Services Cost Sharing Amendment, the IBM World Trade Corporation Services Intangibles and Shared Services Cost Sharing Amendment, and the IBM World Trade Corporation Hardware Intangibles and Shared Services Cost Sharing Amendment." Please *see* the arguments made in Interrogatory No. 3 in this Reply *supra*.

Request No. 11 asks Petitioner to produce documentation of each WTC officer's duties, including a job description. Documents produced by Petitioner do not provide a job description of WTC's officer's duties; only "job titles or roles." See IBM_0195. Petitioner claims not to

have any “documentation of each WTC officer’s duties or job descriptions for 2007 and 2008.”

Response to Motion to Compel, ¶104. If the documentation is missing or destroyed, Petitioner should respond to Request No. 38.

Request No. 13. In Request 13., Department requests the “travel log for each officer of WTC” and “the travel log for each employee of WTC who traveled to the U.S. on business.” In *Zebra*, the court found relevant the fact that individuals other than the sole employee of the Bermuda companies were “in the U.S. performing activities for” the Bermuda companies. The purpose of this request is to determine if employees of WTC, other than the 20 U.S. employees acknowledged by Petitioner, performed services in the U.S. The fact that this request is now seven or eight years removed from the creation of the document is irrelevant. The Petitioner was put on notice of the audit in August of 2010 and must keep records to support its returns.

Request No. 14. In request for production 14., Department requests documentation of travel and entertainment expenses paid by WTC or such expenses incurred by an officer or employee of WTC. These documents are relevant to determining if persons other than the employees of WTC were “in the U.S. performing activities for” WTC. *Zebra*. Petitioner claims the request is unduly burdensome, but provides no facts to support that contention. The Department is seeking to recover \$15,641,342 in tax, plus \$6,256,536.80 of penalties, and \$6,024,387.88 of interest in this matter. Petitioner has not demonstrated how “the costs and effort to obtain these travel and entertainment expense records would far outweigh any potential benefit.” Response to Motion to Compel, ¶114.

Request No. 15 requests copies of documents (“invoices, bills, statements, contracts, etc.”) “evidencing the cost of all training facilities located in the U.S. that were rented by Petitioner and used by an officer or employee of WTC or individuals that comprise all or part of

the \$1,168,364,321 for 2007 and \$1,147,475,232 for 2008 wages paid by WTC to IBM” through the cost sharing agreements. Petitioner has not provided documentation evidencing rent expenses and/or real property ownership for training facilities. Its officers and employees, presumably, required training. With regard to the Cost Sharing Agreements, please *see* arguments made in Interrogatory No. 3 of this Reply *supra*.

Request No. 16 seeks a copy of WTC’s personnel directory for the Tax Year’s at Issue. Petitioner stated that it “does not have available a WTC personnel directory for the Tax Years at Issue.” A tech industry giant, such as IBM, surely had an electronic directory of employees. If WTC’s personnel were included in IBM’s personnel directory, then that directory should be provided.

Request No. 18. In request for production 18., the Department seeks documents such as “purchase contracts, leases, subleases, assignments, and agreements,” “evidencing procurement of office, warehouse, facilities or other storage space provided by IBM to WTC and [to] individuals that comprise all or part of the . . . wages paid by WTC to IBM” under the cost sharing agreements. The purpose of this request is to obtain information relevant to the property factor. These documents almost certainly contain a price term, which will help determine the value of the property for purposes of the property factor calculation. With regard to the Cost Sharing Agreements, please *see* arguments made in Interrogatory No. 3 of this Reply *supra*.

Request No. 19. In request for production 19., the Department seeks “documents evidencing the purchase or rental by IBM of real or tangible personal property located in the United States that was used by WTC in the regular course of business.” The purpose of this request is to obtain information relevant to the numerator of the property factor; specifically the value of the property used by WTC. Regulation 100.3380 provides: “If property owned by

others is used by the person at no charge or rented by the person for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for such property.” 86 Ill. Admin. Code §100.3380(b)(2). Bates IBM_038 through 0341 do not disclose the “purchase or rental by IBM” of property “used by WTC.”

Request No. 23 requested WTC’s balance sheet and income statement for the tax years ending December 31, 2006, 2007 and 2008. Petitioner did not produce WTC’s balance sheet and income statement. Petitioner did not answer by substituting and producing the Schedule L from its US Corporation Tax Returns (US 1120) for 2006, 2007 and 2008 because what Petitioner produced was incomplete in that it did not include the referenced detail statements in the Schedule Ls. The Department seeks a copy of WTC’s balance sheet and income statement (prepared in accordance with Generally Accepted Accounting Principles) for each of the aforementioned tax years.

Request No. 24. Request 24 seeks copies of reports documenting internal audits of WTC conducted by WTC, IBM, or a third party. The term “internal audit” is commonly used in the industry. The request is even broader as it asks for not only internal audits conducted by IBM, WTC or third parties but any evaluations or analysis of the operations or activities of WTC. Despite several supplemental responses, Petitioner has failed to produce any documents.

Request No. 26. Request 26 requests WTC’s Board of Directors’ minutes, committee minutes, agendas, resolutions, and consents.

With regard to Petitioner’s claim of privilege regarding the WTC Directors meetings, committee minutes, agendas resolutions, please *see* the privilege argument in Department’s Motion to Compel, Request No. 24. In its supplement, Petitioner provided various consents in lieu of meetings, however, it is unclear whether there were no other meetings of the Directors, or

committee meetings, agendas or other resolutions. The Department needs all responsive documents before conducting depositions. Department requests the Tribunal order Petitioner to provide any additional responsive documents, or a written response stating there are no other responsive documents.

Request No. 27. Request 27 asks Petitioner to produce IBM's Board of Directors' meeting minutes, committee minutes, agendas, resolutions, and consents. These documents may contain relevant information regarding WTC's activities, activities conducted by IBM for the benefit of WTC, the cost-sharing agreements, and cost sharing payments. These documents are not in the possession of the Department. Petitioner has not produced a privilege log to the Department that identifies the documents withheld and the privilege asserted, pursuant to Illinois Supreme Court Rule 201(n).

Request No. 28. In request for production 28., Department requests "documentation evidencing the square footage of any facility located in the United States (including U.S. territories) that was owned or leased by IBM and used by an officer, director, or employee of WTC during the years at issue." The purpose of the request is to aid in determining the value of the real property used by WTC for which no rent was paid. 86 Ill. Admin. Code § 100.3380(b)(2). ("If property owned by others is used by the person at no charge or rented by the person for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for such property."). In its supplemental response of October 2, 2015, Petitioner produced IBM "e-place Guidelines 3.1," effective for 2010, which described the amount of square feet of office space for different employee categories. However, this information does not provide "the square footage of any facility located in the United States (including U.S. territories) that was owned or leased by IBM and used by an officer, director, or

employee of WTC during the years at issue.” The documents provided do not identify the facility or the total amount of square feet used by WTC. Additionally, it cannot be “deduced from these guidelines” how many square feet WTC’s officers used, because “officer” is not a category on page IBM_0281. Perhaps they are “executive band A?” Or possibly “executive band B.” Nor is the square footage used by the 20 WTC employees on IBM_0234 easily determined. For example did Deborah Arias, Materials Logistics Sr Prof, (Program Manager in 2007) have 48 square feet of office space as allotted for “professionals,” or 56 square feet for “team leaders,” or 64 square feet for “supervisors and program managers?” Is a “Staff Prof” “staff” - 25 square feet - or a “professional” - 48 square feet? Is an “Adv Prof” a professional – 48 square feet – or a “supervisor” – 64 square feet? Department requests a floorplan showing the square-footage for each floor of each building in which a WTC employee or officer worked.

Request No. 30 asks Petitioner to produce a copy of “all employment manuals, policy and procedure guides, handbooks, and/or corporate information applicable to WTC employees” during the Tax Years at Issue. Manuals showing common policies, procedures or direction for services or guidance are relevant to determine if IBM performs services on behalf of WTC. This documentation is relevant to both the payroll and property factors in determining whether WTC’s business activity outside the United States is 80% or more of its total activity. The Department asked for “employment manuals, policy and procedure guidelines, handbooks, and/or corporate information *applicable to* WTC employees.” If WTC did not have its own policy manuals, then almost certainly the policy manuals of IBM covered WTC employees. See IBM_0281-0283, for example, which Petitioner stated applied to WTC employees. Petitioner’s Response to Department’s Motion to Compel, ¶¶ 140-141.

Request No. 31 asks Petitioner to produce *all* agreements between WTC and IBM.

Petitioner produced some agreements. Pursuant to Definition 27., “‘IBM’ means International Business Machines Corporation (FEIN: 13-0871985) including its *subsidiaries*, affiliates, agents and assigns.” Petitioner provided a sample agreement titled “Intercompany Agreement on Support Services” between WTC and IMB Ukraine, LLC, but did not state whether this agreement is representative of, or identical to, its agreements with all controlled foreign corporations. Department specifically requests a representative sample of the sub-licensing agreements between WTC and any subsidiary or affiliate of IBM that were in effect during the Tax Years at Issue. The sub-licensing agreements should reveal the duties between the parties and the duties are relevant to the property and payroll factors in determining whether WTC’s business activity outside the U.S. is 80% or more of its total activity. Additionally, Petitioner has not provided a Management services agreement between IBM and WTC. Finally, Petitioner claims that there are hundreds of agreements that are not relevant and the cost produce them would outweigh any potential benefit. Rather than producing hundreds of agreements, Department, requests a list showing the name of each agreement, the parties thereto, and a brief description of the purpose of the agreement.

Request No. 32. In request for production 32., Department requests the transfer pricing studies Petitioner alleged in its Petition as support for its Cost Sharing Agreements. Petition, ¶¶ 16 - 21. The transfer pricing studies are relevant to determine what royalty WTC would be required to pay to IBM if it did not have a Cost Sharing Agreement. (By comparing the royalty received by WTC from the IBM controlled foreign corporations.) According to the Petitioner, the transfer pricing studies show “the royalty [paid to WTC] is within the interquartile range for comparable uncontrolled software license transactions.” Petition, ¶21. If IBM and WTC did not have a cost sharing agreement, WTC would be required to pay IBM a

reasonable royalty for use of its intellectual property. This royalty payment represents the value of the intellectual property owned, created, maintained, and protected by IBM.

Request No. 33 requests all bank statements for accounts maintained by WTC both inside and outside of the United States for the Tax Years at Issue. Petitioner claims that producing the bank statements would be unduly burdensome and irrelevant. In the alternative, the Department requests the bank statements for WTC's payroll account during the Periods at Issue.

Request No. 34 seeks various documents pertaining to the location of real property that was used by an officer, director, employee or agent of WTC in the United States or its territories during the Tax Years at Issue. This request for the location of real property used by WTC is relevant to the property factor in determining whether WTC's business activity outside the United States is 80% or more of its total activity. Petitioner produced documents IBM_0195 and IBM_0234, which includes the identity of the WTC Officers, Officer W-2s and identity of WTC Employees, which are not documents pertaining to owned or leased real property that was used by WTC in the United States or its territories.

Request No. 35 seeks documents pertaining to Interrogatory Number 6, (which requests the location of real property where an officer, director, employee or agent of Petitioner/IBM performed services on behalf of WTC), "including but not limited to all approval committee meeting notes and minutes, all notes, memorandums, emails, correspondence between officers, directors, employees of IBM and WTC regarding all federals, state and local permits and licenses, mortgages, leases, contracts for deed, subleases, assignments, sales agreements, liens or other encumbrances, construction agreements, addendums, riders, all documents evidencing ownership including deeds, certificates of transfer, title commitments, UCC filings, Section 1031

transfers, escrow account statements or any other like documents.” This request is seeking documents regarding the real property used by WTC during the Years at Issue. This request is relevant to the property factor in determining whether WTC’s business activity outside the United States is 80% or more of its total activity.

Request No. 36 seeks documents evidencing Petitioner’s response to Interrogatory No. 7, which concerns the cost, lease amount or fair market value for all tangible personal property used by an officer, employee, or agent of WTC in performing services on behalf of WTC within the United States and its territories. The documents produced by Petitioner are not responsive because they do not disclose the cost, lease amount, or fair market value for all of the tangible personal property used by an officer, employee, or agent of WTC in performing services on behalf of WTC within the United States and its territories. This information is relevant to calculating the property factor. Additionally, Petitioner stated in its Response that the DOR auditor accepted the schedules IBM provided. Petitioner may have submitted the aforementioned schedules to the auditor, and the auditor may have “accepted” them as received, but not as demonstrative of all tangible personal property or as wholly responsive to her request.

Request No. 37 seeks documents pertaining to Interrogatory No. 8, which concerns the cost, lease amount or fair market value for all tangible personal property used by an officer, employee, or agent of IBM in performing services on behalf of WTC within the United States and its territories. Request 37 is relevant to the property factor in determining whether WTC’s business activity outside the United States is 80% or more of its total activity. In the alternative, the Department requests a copy of IBM’s inventory tracking report (a document that shows the location of assets assigned to or used by a particular employee or division), purchase orders and a depreciation schedule for tangible personal property used by IBM officers, employees, or agent

in performing services on behalf of WTC within the United States and its territories during the Tax Years at Issue.

Request No. 38. Request 38 requests the document retention policy for each document that Petitioner was unable to locate or that was destroyed. Petitioner has claimed that certain documents are not in its possession or control. If responsive documents were lost or destroyed, the Department has a right to know whether Petitioner followed the written record retention policy in effect.

WHEREFORE, the Department moves this Tribunal to enter an order compelling Petitioner to respond in full to the Department's First Set of Interrogatories and First Request for Production of Documents.

Respectfully submitted,

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Department's Reply to its Motion to Compel
Docket No. 14-TT-229

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