

ILLINOIS INDEPENDENT TAX TRIBUNAL

)
MERCK SHARP & DOHME CORP.)
(F/K/A SCHERING CORPORATION),)
)
Petitioner)
)
-v.-)
)
ILLINOIS DEPARTMENT OF REVENUE,)
)
)
Respondent.)

Case No. **RECEIVED**
AUG 30 2016
BY: _____
PETITION 16 TI 176

Petitioner, Merck Sharp & Dohme Corp. (f/k/a Schering Corporation), by and through its undersigned counsel, Alston & Bird LLP, respectfully alleges as follows:

THE PARTIES

1. Petitioner is Merck Sharp & Dohme Corp. (f/k/a Schering Corporation) (“Schering”).
2. Schering’s address is 2000 Galloping Hill Road, Kenilworth, New Jersey, 07033-1310.
3. Schering’s telephone number is (908) 740-1210.
4. Schering’s taxpayer identification number is 22-1261880.
5. Respondent is the Illinois Department of Revenue (the “Department”).

JURISDICTION

6. This Tribunal has original jurisdiction over this action pursuant to 35 ILCS 1010/1-45.

BACKGROUND

7. The Department conducted an income tax audit of Schering with respect to the tax year ended December 31, 1999 (the "Tax Year").

8. As a result of the audit, the Department issued a Notice of Deficiency (the "Original Notice") for the Tax Year through which it assessed \$457,105.00 of income tax, \$238,295.00 of personal property tax replacement income tax (hereinafter, referred to collectively as "Tax"), interest of \$1,135,408.80, and penalty of \$500.00. A copy of the Original Notice is attached hereto as Exhibit A.

9. Schering filed a petition with the Illinois Independent Tax Tribunal (the "Tribunal") protesting the Original Notice on May 18, 2016. Through its order dated May 20, 2016 (the "Order"), the Tribunal accepted Schering's petition with respect to the Original Notice. A copy of the Order is attached hereto as Exhibit B.

10. On July 26, 2016, the Department issued a second Notice of Deficiency (the "Notice") for the Tax Year through which it asserted \$457,105.00 of income tax, \$238,295.00 of personal property tax replacement income tax, interest of \$1,564,718.36, and penalties of \$250,844.00. The Notice is attached hereto as Exhibit C.

11. Through the Notice, the Department asserted additional Tax, interest, and penalties for the Tax Year on the same bases as it assessed Tax, interest, and penalties through the Original Notice, but also asserted a late payment or underpayment penalty for the first time under 35 ILCS 735/3-3(b-5)(1) and asserted interest on this penalty for the first time under 35 ILCS 735/3-2(c).

12. Through the Notice, the Department asserted that it is not prohibited by federal law from taxing Schering's income.

13. Through the Notice, the Department asserted that Schering and certain of Schering's subsidiary entities engaged in a unitary business in Illinois during the Tax Year.

14. Schering did not have offices, employees, agents or any other physical presence in Illinois during the Tax Year.

ERRORS OF THE DEPARTMENT OF REVENUE

Error 1

15. Through the Notice, the Department violated Illinois law because the Department is barred from issuing a further or additional notice of deficiency for the Tax Year under 35 ILCS 5/906.

16. Because the Department is barred from issuing a further or additional notice of deficiency for the Tax Year under 35 ILCS 5/906, the Notice is void *ab initio* and should therefore be stricken.

Error 2

17. Through the Notice, the Department erroneously asserted late payment or underpayment, late-filing, and double penalties under 35 ILCS 735/3-3(a-5), (b-5)(1) and (i) because Schering had reasonable cause for not filing tax returns or making tax payments by the payment due dates. 35 ILCS 735/3-8; Ill. Admin. Code § 700.400; see Security Life of Denver Insurance Company v. Illinois Department of Revenue, 14 TT 89 (Ill. Indep. Tax Tribunal 2016).

18. The Department's improper application of late payment or underpayment, late-filing, and double penalties under 35 ILCS 735/3-3(a-5), (b-5)(1) and (i) violated the Due Process Clause of the United States Constitution by arbitrarily and unreasonably penalizing Schering for a tax liability that was not known to Schering through no fault of its own and despite Schering's exercise of good faith in determining its tax liability. 35 ILCS 735/3-8; Ill. Admin. Code § 700.400;

see Security Life of Denver Insurance Company v. Illinois Department of Revenue, 14 TT 89 (Ill. Indep. Tax Tribunal 2016).

Error 3

19. Through the Notice, the Department erroneously asserted interest on penalties under 35 ILCS 735/3-2(c) and double interest and double penalties under 35 ILCS 735/3-2(f) and 3-3(i) because Schering did not have “taxes due” under 35 ILCS 745/10. See Metropolitan Life Insurance Co. v. Hamer, 966 N.E.2d 1052 (Ill. App. Ct. 2012) rev’d 990 N.E.2d 1144 (Ill. 2013).

20. The Department’s improper application of interest on penalties under 35 ILCS 735/3-2(c) and double interest and double penalties under 35 ILCS 735/3-2(f) and 3-3(i) violated the Due Process Clause of the United States Constitution by arbitrarily and unreasonably penalizing Schering for a tax liability that was not known to Schering until after the amnesty period described in 35 ILCS 745/10 had expired.

Error 4

21. Through the Notice, the Department erred by concluding that it may impose Tax with respect to Schering for the Tax Year. That conclusion is in error because the Department is prohibited by federal law from taxing Schering’s income. 15 U.S.C. §§ 381-384 (“P.L. 86-272”); U.S. CONST. amend. XIV; U.S. CONST. art. I, § 8, cl. 3.

Error 5

22. Through the Notice, the Department violated both the Commerce and Due Process Clauses of the United States Constitution because Schering did not engage in a unitary business in Illinois during the Tax Year. See Allied-Signal, Inc. v. Director, Div. of Taxation, 504 U.S. 768 (1992).

23. The Department's conclusion that Schering engaged in a unitary business in Illinois during the Tax Year is also invalid because the Department did not develop a factual foundation to support its assertion that Schering engaged in a unitary business in Illinois during the Tax Year. See, e.g., United States v. Janis, 428 U.S. 433, 442 (1976).

Error 6

24. Through the Notice, the Department improperly determined Schering's Illinois taxable income. See 35 ILCS 5/101 et seq.

RELIEF REQUESTED

WHEREFORE, Schering respectfully requests that this Tribunal issue a judgment against the Respondent:

25. Striking the Notice as invalid;

26. Declaring and adjudging that all Tax, penalties, and interest asserted through the Notice are invalid; and

27. Granting such other and further relief, legal or equitable, as the Tribunal deems just and appropriate.

Dated: August 22, 2016

Respectfully submitted,

ALSTON & BIRD LLP
Counsel for Plaintiff,
Merck Sharp & Dohme Corp.
(f/k/a Schering Corporation)



Syed Fahad Saghir (ARDC No. 6290645)
950 F Street NW
Washington, DC 20004
202-239-3220
fahad.saghir@alston.com

Exhibit A

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



March 22, 2016



Letter ID: CNXXX18486981284

#BWNKMGV
#CNXX X184 8698 1284#
MERCK SHARP & DOHME CORP
STOP
K5 3008G
2000 GALLOPING HILL RD
KENILWORTH NJ 07033-1310

Taxpayer ID: 22-1261880
Audit ID: A2109196800
Reporting period: December 1999
Total Deficiency: \$1,831,308.80
Balance due: \$1,831,308.80

We have audited your account for the reporting period listed above. The members of the combined group are jointly and severally liable for the total balance due. 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 the "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 the date 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 and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the 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). 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 liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at 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 assessment total 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,

Constance Beard
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 785-6711

cc: MERCK SHARP & DOHME CORP
ATTN: FRED O MARCUS
500 WEST MADISON ST
CHICAGO IL 60661

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 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, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

Statement

Date: March 22, 2016
Name: MERCK SHARP & DOHME CORP
Taxpayer ID: 22-1261880
Letter ID: CNXXX18486981284

The attached EDA-27, Explanation of Adjustments, details your audit adjustments.

Computation of deficiency

Reporting period: 31-Dec-1999

Income or loss	
Federal taxable income	\$557,162,594.00
Net operating loss deduction	\$0.00
Income or loss	\$557,162,594.00
Base income or loss	
Other subtractions	\$298,769,691.00
Total subtractions	\$298,769,691.00
Base income or net loss	\$258,392,903.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$0.00
Business income or loss	\$258,392,903.00
Apportionment formula	
Property Factor	
Total everywhere	\$2,747,699,703.00
Within Illinois	\$5,562,801.00
Factor	0.002025
Weighted factor	0.083333
Weighted total	0.000169
Payroll Factor	
Total everywhere	\$1,161,595,137.00
Within Illinois	\$17,449,362.00
Factor	0.015022
Weighted factor	0.083333
Weighted total	0.001252
Sales Factor	
Total everywhere	\$4,934,128,260.00
Within Illinois	\$210,000,000.00
Factor	0.042561
Weighted factor	0.833334
Weighted total	0.035468
Apportionment factor	0.036889
Business income/loss apportionable to IL	\$9,531,856.00

Statement

Date: March 22, 2016
Name: MERCK SHARP & DOHME CORP
Taxpayer ID: 22-1261880
Letter ID: CNXXX18486981284

Computation of deficiency	Reporting period: 31-Dec-1999
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	\$9,531,856.00
Net income	
Base income or net loss	\$9,531,856.00
Approved Net Loss Carry Forward	\$0.00
Approved Net Loss Carry Back	\$0.00
IL net loss deduction (NLD) Varified	\$0.00
Standard exemption	\$37.00
Net income	\$9,531,819.00
Net replacement tax	
Replacement tax addback after apportionment	\$0.00
Replacement tax	\$238,295.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$238,295.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$238,295.00
Net income tax	
Income tax	\$457,527.00
Recapture of investment credits	\$0.00
Income tax before credits	\$457,527.00
Income tax investment credits	\$0.00
Credit for replacement tax paid	\$422.00
Carryforward of credit for repl. tax paid	\$0.00
Net income tax	\$457,105.00
Total tax due	
Net replacement tax	\$238,295.00
Net income tax	\$457,105.00
Total net income and replacement tax due	\$695,400.00
Total tax deficiency	\$695,400.00
Plus late-filing penalty	\$500.00
Plus interest on tax through March 22, 2016	\$1,135,408.80
Total deficiency	* \$1,831,308.80

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

Statement

Date: March 22, 2016
Name: MERCK SHARP & DOHME CORP
Taxpayer ID: 22-1261880
Letter ID: CNXXX18486981284

Computation of balance due

Reporting period: 31-Dec-1999

Balance due

* \$1,831,308.80

Explanation of Audit Adjustments

Income Tax



March 22, 2016

#BWNKMGV
#CNXX XXX6 2685 2646#
MERCK SHARP & DOHME CORP
STOP
K5 3008G
2000 GALLOPING HILL RD
KENILWORTH NJ 07033-1310



Letter ID: CNXXXXX626852646

Taxpayer ID: 22-1261880
Account ID: 20432-61952
Audit ID: A2109196800
Reporting period: December 1999

Explanation of adjustments for tax period ending 12/31/1999

	<u>Income change</u>	<u>Tax impact</u>
We have determined that you were required to file an income tax return. Since you did not file a return, we have computed your Illinois Income Tax liability based on the information that we have available. [35 ILCS 5/502(a), 904(b)]	\$0.00	\$0.00
We have determined that you do not have nexus protection under PL 86-272. Any applicable income earned will be subject to apportionment and Illinois Income Tax. [35 ILCS 5/304 and 86 IL Adm. Code 100.9270]		
We determined that you and one or more of your related corporations were engaged in a unitary business during the tax years identified in this notice. Accordingly, you and the other members of the unitary business group must use combined apportionment to determine how much of your business income is taxable by Illinois. Corporations (other than S corporations) who are members of a unitary business group must file a single combined return for each year. [35 ILCS 5/304(e), 502(e), 1501(a)(27)] See attached list of the members of your unitary business group.		
We adjusted your Illinois net income or loss to correctly reflect income or loss. [35 ILCS 5/203(b), (c), (d), (e)]	\$498,430,985.00	\$1,342,224.00
We adjusted your Illinois net income or loss to reflect a change in your federal income or loss, which you failed to report. [35 ILCS 5/506(a), 506(b), 403(b)]	\$58,731,609.00	\$158,158.00
We adjusted your subtraction modifications for foreign dividends on Schedule J, Foreign Dividends, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203(b)(2)(G), (b)(2)(O), (h)]	\$298,769,691.00	-\$804,556.00
We adjusted your sales factor to include all business receipts on federal 1120, Lines 1 through 10, to the extent not expressly excluded from the sales factor. [86 IL Adm. Code 100.3370(a)(1)]	\$2,747,699,703.00	\$0.00
We computed your Illinois sales numerator to account for the Illinois destination sales of those entities whose activities exceeded the protection afforded by PL 86-272.	\$210,000,000.00	\$0.00
We corrected math errors made in figuring your property factor. [35 ILCS 304(a)(1)(A)]	\$2,747,699,703.00	\$0.00
We computed your Illinois property numerator to account for the Illinois property of those entities whose activities exceeded the protection afforded by PL 86-272.	\$5,562,801.00	\$0.00
We adjusted your payroll everywhere using your consolidated federal 1120, which detailed the wage expenses incurred by each member of the combined group. [86 IL Adm. Code 100.3360]	\$1,161,595,137.00	\$0.00

Date: March 22, 2016

Letter ID: CNXXXXX626852646
Name: MERCK SHARP & DOHME CORP
Taxpayer ID: 22-1261880
Account ID: 20432-61952
Audit ID: A2109196800
Reporting period: December 1999

Explanation of adjustments for tax period ending 12/31/1999

Income change

Tax impact

We computed your Illinois payroll numerator from a state-by-state breakdown of the entities whose activities exceeded the protection afforded by PL 86-272.

\$174,493,620.00

\$0.00

We adjusted your replacement tax paid credit as required by Illinois law.
[35 ILCS 5/201(i)]

-\$425.00

-\$425.00

Interest on tax has been computed as allowed by Illinois law.
[35 ILCS 735/3-2]

We are imposing a late-filing or nonfiling penalty because you either did not file a return by the due date (including any extensions) or filed an unprocessable return and did not correct the return to make it processable before the later of the due date of the return or 30 days after we sent you a notice that your return was unprocessable. This penalty is equal to the lesser of \$250 or 2 percent of the tax required to be shown due on your return, without regard to any payments and credits.
[35 ILCS 735/3-3(a-5)]

Because this liability qualified for amnesty, and you did not pay this liability during the amnesty period held October 1, 2003, through November 17, 2003, your applicable penalty and interest amounts were doubled.
[35 ILCS 735/3-2(f) and 3-3(i)]

Exhibit B

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

MERCK SHARP & DOHME CORP.,)	
(F/K/A SCHERING CORPORATION),)	
Petitioner,)	
)	
)	
v.)	16 TT 103
)	Judge Brian F. Barov
ILLINOIS DEPARTMENT)	
OF REVENUE,)	
Respondent.)	

ORDER

This order applies to the related matters of 16 TT 104, 16 TT 105 and 16 TT 106, and will be entered on the docket in those cases.

The petition in this matter has been accepted by the Tribunal, and the Department's answer is due on or before July 11, 2016. The initial status conference is set for July 26, 2016, at 9:30 a.m., by telephone.

At the initial status conference, the parties should be prepared to discuss: 1) the nature of the case; 2) factual and legal issues; 3) settlement potential and discussions to date; 4) anticipated discovery; and 5) potential motions to be filed.

s/ *Brian Barov*
BRIAN F. BAROV
Administrative Law Judge

Date: May 20, 2016

Exhibit C

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



July 26, 2016



Letter ID: CNXXXX7682599844

#BWNKMGV
#CNXX XX76 8259 9844#
MERCK SHARP & DOHME CORP
STOP
K5 3008G
2000 GALLOPING HILL RD
KENILWORTH NJ 07033-1310

Taxpayer ID: 22-1261880
Audit ID: A2109196800
Reporting period: December 1999
Total Deficiency: \$2,510,962.36
Balance due: \$2,510,962.36

We have audited your account for the reporting period listed above. The members of the combined group are jointly and severally liable for the total balance due. The attached statement explains the computation of your deficiency and the balance due. This notice is an amendment to the notice we previously issued to you on March 22, 2016. **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 the "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 the date 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 and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the 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). 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 liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at 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 assessment total 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,

Constance Beard
Director

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

(217) 785-6711

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 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, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

Statement

Date: July 26, 2016
Name: MERCK SHARP & DOHME CORP
Taxpayer ID: 22-1261880
Letter ID: CNXXXX7682599844

Computation of deficiency		Reporting period: 31-Dec-1999
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		\$9,531,856.00
Net income		
Base income or net loss		\$9,531,856.00
Approved Net Loss Carry Forward		\$0.00
Approved Net Loss Carry Back		\$0.00
IL net loss deduction (NLD) Varified		\$0.00
Standard exemption		\$37.00
Net income		\$9,531,819.00
Net replacement tax		
Replacement tax addback after apportionment		\$0.00
Replacement tax		\$238,295.00
Recapture of investment credits		\$0.00
Replacement tax before credits		\$238,295.00
Replacement tax investment credits		\$0.00
Net replacement tax		\$238,295.00
Net income tax		
Income tax		\$457,527.00
Recapture of investment credits		\$0.00
Income tax before credits		\$457,527.00
Income tax investment credits		\$0.00
Credit for replacement tax paid		\$422.00
Carryforward of credit for repl. tax paid		\$0.00
Net income tax		\$457,105.00
Total tax due		
Net replacement tax		\$238,295.00
Net income tax		\$457,105.00
Total net income and replacement tax due		\$695,400.00
Total tax deficiency		\$695,400.00
Plus late-filing penalty		\$500.00
Plus late ES payment or underpayment penalty		\$250,344.00
Plus interest on tax through July 26, 2016		\$1,564,718.36
Total deficiency		* \$2,510,962.36

Statement

Date: July 26, 2016
Name: MERCK SHARP & DOHME CORP
Taxpayer ID: 22-1261880
Letter ID: CNXXXX7682599844

The attached EDA-27, Explanation of Adjustments, details your audit adjustments.

Computation of deficiency

Reporting period: 31-Dec-1999

Income or loss	
Federal taxable income	\$557,162,594.00
Net operating loss deduction	\$0.00
Income or loss	\$557,162,594.00
Base income or loss	
Other subtractions	\$298,769,691.00
Total subtractions	\$298,769,691.00
Base income or net loss	\$258,392,903.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$0.00
Business income or loss	\$258,392,903.00
Apportionment formula	
Property Factor	
Total everywhere	\$2,747,699,703.00
Within Illinois	\$5,562,801.00
Factor	0.002025
Weighted factor	0.083333
Weighted total	0.000169
Payroll Factor	
Total everywhere	\$1,161,595,137.00
Within Illinois	\$17,449,362.00
Factor	0.015022
Weighted factor	0.083333
Weighted total	0.001252
Sales Factor	
Total everywhere	\$4,934,128,260.00
Within Illinois	\$210,000,000.00
Factor	0.042561
Weighted factor	0.833334
Weighted total	0.035468
Apportionment factor	0.036889
Business income/loss apportionable to IL	\$9,531,856.00

Statement

Date: July 26, 2016
Name: MERCK SHARP & DOHME CORP
Taxpayer ID: 22-1261880
Letter ID: CNXXXX7682599844

Computation of deficiency

Reporting period: 31-Dec-1999

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

Computation of balance due

Reporting period: 31-Dec-1999

Balance due

* \$2,510,962.36

Explanation of Audit Adjustments

Income Tax



#BWNKMGV
#CNXX X186 599X 2242#
MERCK SHARP & DOHME CORP
STOP
K5 3008G
2000 GALLOPING HILL RD
KENILWORTH NJ 07033-1310

July 26, 2016



Letter ID: CNXXX186599X2242

Taxpayer ID: 22-1261880
Account ID: 20432-61952
Audit ID: A2109196800
Reporting period: December 1999

Explanation of adjustments for tax period ending 12/31/1999

We have determined that you were required to file an income tax return. Since you did not file a return, we have computed your Illinois Income Tax liability based on the information that we have available.

[35 ILCS 5/502(a), 904(b)]

Return Impact

\$0.00

Tax impact

\$0.00

We have determined that you do not have nexus protection under PL 86-272. Any applicable income earned will be subject to apportionment and Illinois Income Tax.

[35 ILCS 5/304 and 86 IL Adm. Code 100.9270]

We determined that you and one or more of your related corporations were engaged in a unitary business during the tax years identified in this notice. Accordingly, you and the other members of the unitary business group must use combined apportionment to determine how much of your business income is taxable by Illinois. Corporations (other than S corporations) who are members of a unitary business group must file a single combined return for each year.

[35 ILCS 5/304(e), 502(e), 1501(a)(27)] See attached list of the members of your unitary business group.

We adjusted your Illinois net income or loss to correctly reflect income or loss.

[35 ILCS 5/203(b), (c), (d), (e)]

\$498,430,985.00

\$1,342,224.00

We adjusted your Illinois net income or loss to reflect a change in your federal income or loss, which you failed to report.

[35 ILCS 5/506(a), 506(b), 403(b)]

\$58,731,609.00

\$158,158.00

We adjusted your subtraction modifications for foreign dividends on Schedule J, Foreign Dividends, to reflect the correct amount as allowed by Illinois law.

[35 ILCS 5/203(b)(2)(G), (b)(2)(O), (h)]

\$298,769,691.00

-\$804,556.00

We adjusted your sales factor to include all business receipts on federal 1120, Lines 1 through 10, to the extent not expressly excluded from the sales factor.

[86 IL Adm. Code 100.3370(a)(1)]

\$2,747,699,703.00

\$0.00

We computed your Illinois sales numerator to account for the Illinois destination sales of those entities whose activities exceeded the protection afforded by PL 86-272.

\$210,000,000.00

\$0.00

We corrected math errors made in figuring your property factor.

[35 ILCS 304(a)(1)(A)]

\$2,747,699,703.00

\$0.00

We computed your Illinois property numerator to account for the Illinois property of those entities whose activities exceeded the protection afforded by PL 86-272.

\$5,562,801.00

\$0.00

We adjusted your payroll everywhere using your consolidated federal 1120, which detailed the wage expenses incurred by each member of the combined group.

[86 IL Adm. Code 100.3360]

\$1,161,595,137.00

\$0.00

Date: July 26, 2016

Letter ID: CNXXX186599X2242
Name: MERCK SHARP & DOHME CORP
Taxpayer ID: 22-1261880
Account ID: 20432-61952
Audit ID: A2109196800
Reporting period: December 1999

Explanation of adjustments for tax period ending 12/31/1999

	<u>Income change</u>	<u>Tax impact</u>
We computed your Illinois payroll numerator from a state-by-state breakdown of the entities whose activities exceeded the protection afforded by PL 86-272.	\$174,493,620.00	\$0.00
We adjusted your replacement tax paid credit as required by Illinois law. [35 ILCS 5/201(i)]	-\$425.00	-\$425.00
Interest on tax has been computed as allowed by Illinois law. [35 ILCS 735/3-2]		
We are imposing a late-filing or nonfiling penalty because you either did not file a return by the due date (including any extensions) or filed an unprocessable return and did not correct the return to make it processable before the later of the due date of the return or 30 days after we sent you a notice that your return was unprocessable. This penalty is equal to the lesser of \$250 or 2 percent of the tax required to be shown due on your return, without regard to any payments and credits. [35 ILCS 735/3-3(a-5)]		
Interest on penalty has been computed as allowed by Illinois law. [35 ILCS 735/3-2(c)]		
We are imposing a penalty because you did not make required estimated tax payments or pay the required amount by the payment due date. This penalty is 20 percent of the required estimated tax due for each quarter, minus any timely payments and credits. [35 ILCS 735/3-3(b-5)(1)]		
Because this liability qualified for amnesty, and you did not pay this liability during the amnesty period held October 1, 2003, through November 17, 2003, your applicable penalty and interest amounts were doubled. [35 ILCS 735/3-2(f) and 3-3(i)]		

