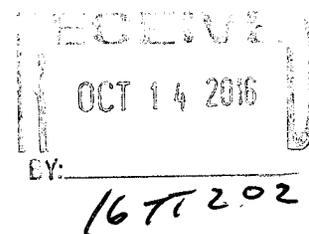


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

KOCH INDUSTRIES, INC.)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT)
 OF REVENUE)
)
 Respondent.)

No. _____



PETITION

The Petitioner, Koch Industries, Inc. (“Petitioner”), individually and on behalf of its unitary affiliates, by and through its attorneys, Baker & McKenzie LLP, who are duly authorized to represent Petitioner in this regard pursuant to the Power of Attorney attached hereto as Exhibit A, hereby petitions the Illinois Independent Tax Tribunal (“Tax Tribunal”) to review and reverse the Notice of Deficiency issued by the Illinois Department of Revenue (“Department”) as follows:

PARTIES

1. Petitioner is a corporation with its principal place of business in Wichita, Kansas.
2. Petitioner’s federal identification number is 48-0484227.
3. Petitioner’s address is 4111 E. 37th Street N. Wichita Kansas 67220-3203, and its telephone number is 316-828-5500.
4. Respondent is an agency of the State of Illinois responsible for administering and enforcing the revenue laws of the State of Illinois.

JURISDICTION

5. The Department issued a Notice of Deficiency (“Notice”) on August 23, 2016 assessing corporation income tax, penalty and interest for the tax period ending December 31,

2012, letter ID CNXXX1X262856486. A copy of the Notice and Explanation of Audit Adjustments, letter ID CNXXX16816587680, are attached hereto as Exhibit B.

6. The Tax Tribunal has original jurisdiction over all Department determinations reflected on a Notice of Deficiency, among other notices, where the amount at issue exceeds \$15,000, exclusive of penalties and interest. 35 ILCS 1010/1-45.
7. The amount at issue in this matter exceeds \$15,000, exclusive of penalties and interest, such that the Tax Tribunal has original jurisdiction over the matter.

BACKGROUND

8. The Department audited Petitioner's 2012 corporation income tax return.
9. Based on its audit, the Department adjusted Petitioner's 2012 corporation income tax return.
10. Specifically, the Department: (1) adjusted the amount of affiliated company interest expense exempt from addition modification and properly deductible; (2) added members to Petitioner's unitary group; and (3) included partnership business income and apportionment factors.

COUNT I

11. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 10 as if fully set forth herein.
12. In the Notice, the Department overstates Petitioner's related party expense addition by understating the amount of affiliated company interest expense that is exempt from addition modification.
13. Illinois law requires taxpayers to add back to taxable income certain identified related party expenses, including affiliated interest. 35 ILCS 5/203.

14. This adjustment is required for interest paid to a foreign entity if that entity would be included in the unitary business group but for the fact that more than 80% of the business activity is outside of the United States. 35 ILCS 5/203(b)(2)(E-12).
15. Illinois law, namely 35 ILCS 5/203(b)(2)(E-12), provides several exemptions to the addition modification including, but not limited to:
- (i) Interest paid to an entity subject to a foreign country's tax measured by net income;
 - (ii) Interest paid pursuant to an agreement providing arm's-length rates and terms and whose principal purpose for the payment is not federal or Illinois tax avoidance; or
 - (iii) When addition modification is unreasonable.
16. The Department erroneously adjusted Petitioner's addition modification by improperly denying one or more exemptions for which Petitioner qualifies.
17. Petitioner paid interest to an entity subject in a foreign country to a tax measured by net income.
18. Petitioner's debt agreements were entered into at arm's-length rates and terms.
19. The principal purpose of Petitioner's debt agreements and resulting payment of interest were not federal or Illinois tax avoidance.
20. The application of Illinois addition modification to Petitioner's related party interest expense is unreasonable.
21. Petitioner qualifies for other exemptions to the addition modification provided under 35 ILCS 5/203(b)(2)(E-12) and Illinois law.

22. In a previous audit, the Department adjusted Petitioner's affiliated company interest expense deductions for tax periods ending December 31, 2010 and December 31, 2011 (the "Prior Periods").
23. Petitioner appealed the Department's adjustments for the Prior Periods by filing a case with the Tax Tribunal, Docket No. 15 TT 170.
24. The Department subsequently conceded that its denial of Petitioner's affiliated company interest expense deductions for the Prior Periods was in error and reversed those adjustments in their entirety.
25. The Tax Tribunal dismissed Docket No. 15 TT 170 on June 29, 2016.
26. The Department's denial of Petitioner's affiliated company interest expense deductions for Petitioner's 2012 tax period is improper.
27. The Notice is in error and must be reversed.

WHEREFORE, Petitioner prays the Tax Tribunal enter an order reversing the Department's denial of Petitioner's affiliated interest expense deductions and abating the assessment in full and such other relief the Tax Tribunal deems appropriate in this matter.

COUNT II

28. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 27 as if fully set forth herein.
29. Illinois law excludes certain foreign affiliates from the Illinois combined unitary group.
See 35 ILCS 5/1501(a)(27).
30. The Department improperly included certain foreign affiliates in Petitioner's Illinois combined group for the 2012 tax period.
31. The Notice is in error and must be reversed.

WHEREFORE, Petitioner prays the Tax Tribunal enter an order reversing the Department's inclusion of foreign affiliates in Petitioner's combined group and abating the assessment in full and such other relief the Tax Tribunal deems appropriate in this matter.

COUNT III

32. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 31 as if fully set forth herein.

33. The Department adjusted the business income and apportionment factors of Petitioner by including business income and apportionment factors of certain partnerships with Petitioner.

34. The Department improperly combined partnership business income and apportionment factors with the business income and apportionment factors of Petitioner's unitary combined group.

35. The Notice is in error and must be reversed.

WHEREFORE, Petitioner prays the Tax Tribunal enter an order reversing the Department's inclusion of certain partnership business income and apportionment factors with the business income and apportionment factors of Petitioner's unitary combined group and abating the assessment in full and such other relief the Tax Tribunal deems appropriate in this matter.

COUNT IV

36. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 35 as if fully set forth herein.

37. When the Department included certain partnership business income and apportionment factors with the business income and apportionment factors of Petitioner's unitary

combined group, it miscalculated Petitioner's Illinois business income and apportionment factors from such partnerships.

38. The Department improperly computed the business income and apportionment factors of certain partnerships included in Petitioner's unitary combined group.

39. The Notice is in error and must be reversed.

WHEREFORE, Petitioner prays the Tax Tribunal enter an order reversing the Department's errors in computing the business income and apportionment factors of partnerships deemed unitary with Petitioner and abating the assessment in full and such other relief the Tax Tribunal deems appropriate in this matter.

COUNT V

40. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 39 as if fully set forth herein.

41. All penalties assessed for the 2012 tax period must be abated in full, regardless of the Tax Tribunal's determinations on Counts I-IV.

42. Specifically, the Department's Notice and Explanation of Audit Adjustments imposes a UPIA-5 late payment penalty of \$644,027 for the 2012 tax period.

43. The Department's penalty assessment must be abated in full for reasonable cause.

44. Under Illinois law, no penalty shall be imposed on a taxpayer if his failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

45. 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." 86 ILAC § 700.400(b).

46. A taxpayer is considered to have made a good faith effort to determine and file and pay his tax liability if "he exercised ordinary business care and prudence in doing so." 86 ILAC § 700.400(c).
47. The taxpayer's filing history is also considered in determining whether the taxpayer acted in good faith. 86 ILAC § 700.400(d).
48. Petitioner made a good faith effort to comply with all applicable laws in preparing its 2012 tax return and timely submitting the tax due and was not reckless, careless or negligent in doing so.
49. Petitioner exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper liability in a timely fashion.
50. Petitioner has a history of timely filing Illinois corporate income tax returns and paying Illinois corporate income tax in a timely manner.
51. Assessment of penalty is not appropriate where the assessment of tax results from reasonable differences or opinions as to the tax liability.
52. Reasonable differences exist here such that even if assessment of the tax at issue is appropriate, assessment of penalty is not.
53. The entire UPIA-5 late payment penalty imposed by the Department must be abated for reasonable cause.

WHEREFORE, Petitioner prays the Tax Tribunal enter an order abating the assessed penalty amount in full and such other relief the Tax Tribunal deems appropriate in this matter.

(The remainder of this page is intentionally blank. Signature page follows.)

Koch Industries, Inc.

Date: October 14, 2016

By: 
An Attorney for Petitioner

Theodore R. Bots (Theodore.Bots@Bakermckenzie.com)
Roman P. Patzner (Roman.Patzner@Bakermckenzie.com)
Baker & McKenzie LLP
300 East Randolph Street, Suite 5000
Chicago, Illinois 60601
312-861-8000
Attorney No. 90080
3808382-v8\CHIDMS1

EXHIBIT A

7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

Theodore R. Bots

Name
300 E. Randolph Street, Ste. 5000
 Street address
Chicago IL 60601
 City State ZIP
(312) 861-8845
 Daytime phone number

Name
 Street address
 City State ZIP
 Daytime phone number

Name
 Street address
 City State ZIP
 Daytime phone number

Step 3: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

I declare that I am **not** currently under suspension or disbarment and that I am

- a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
- duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
- enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

Check one: <input checked="" type="checkbox"/> Attorney <input type="checkbox"/> C.P.A. <input type="checkbox"/> Enrolled agent	IL	<i>[Signature]</i>	10/13/16
	Jurisdiction (state(s), etc.)	Signature	Date
Check one: <input checked="" type="checkbox"/> Attorney <input type="checkbox"/> C.P.A. <input type="checkbox"/> Enrolled agent	IL	<i>Roman Patzer</i>	10/13/16
	Jurisdiction (state(s), etc.)	Signature	Date
Check one: <input type="checkbox"/> Attorney <input type="checkbox"/> C.P.A. <input type="checkbox"/> Enrolled agent			
	Jurisdiction (state(s), etc.)	Signature	Date

Step 4: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

<i>[Signature]</i>			
Taxpayer's signature	Print name	Title, if applicable	Date
<i>[Signature]</i>			
Spouse's signature	Print name	Title, if applicable	Date
	Tobias Teal	Assistant Treasurer	9/29/16
If corporation or partnership, signature of officer or partner	Print name	Title, if applicable	Date

Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete **one** of the following:

Any person signing as or for the taxpayer

- is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

Signature of witness _____ Date _____
 Signature of witness _____ Date _____

- appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary _____ Date _____

Notary seal



EXHIBIT B

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



August 23, 2016



Letter ID: CNXXX1X262856486

_____ #BWNKMGV
#CNXX X1X2 6285 6486#
KOCH INDUSTRIES INC
ATTN: ANDREA HENLEY
_____ PO BOX 2256
WICHITA KS 67201-2256

Taxpayer ID: 48-0484227
Audit ID: A321970176
Reporting period: December 2012
Total Deficiency: \$4,124,201.26
Balance due: \$4,124,201.26

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 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) 524-5292

REDACTED

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2016 a copy of the foregoing Petition has been duly served by U.S. mail, first-class, postage prepaid, on the Illinois Department of Revenue at the following address:

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., Level 7-900 (7th Floor Thompson Center)
Chicago, Illinois 60601



Baker & McKenzie, LLP
300 East Randolph Street, Suite 5000
Chicago, Illinois 60601
312-861-8000