IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

PEPSICO INC. AND AFFILIATES,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. ________________
ILLINOIS DEPARTMENT OF REVENUE	)	
	)	
	)	
Respondent.	)	

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PETITION

Petitioner, PepsiCo, Inc. ("PepsiCo" or "Taxpayer"), individually and on behalf of its unitary subsidiaries, 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 complains of Respondent, Illinois Department of Revenue ("Respondent" or "Department"), as follows:

PARTIES

1. PepsiCo is a publicly-traded corporation duly organized and existing under the laws of the state of Delaware.

2. PepsiCo maintains its corporate headquarters at 700 Anderson Hill Road, Purchase, New York, 10577-1401 and its telephone number is 914-253-2000.

3. PepsiCo's tax identification number is 13-1584302.

4. The Department is an agency of the state of Illinois responsible for administering and enforcing the revenue laws of the state of Illinois.

JURISDICTION

5. On or about December 13, 2016, the Department issued a Notice of Deficiency to PepsiCo asserting additional tax due of $3,355,864 (exclusive of associated interest

and penalties) for the tax year ending December 31, 2012 (the "2012 Notice"). A copy of the 2012 Notice is attached as Exhibit B.

6. The 2012 Notice imposed $671,172.80 in late-payment penalty.

7. The 2012 Notice imposed $312,294.62 in interest as of December 13, 2016.

8. On or about December 14, 2016, the Department issued a Notice of Deficiency to PepsiCo asserting additional tax due of $2,623,354 (exclusive of associated interest and penalties) for the tax year ending December 31, 2013 (the "2013 Notice"). A copy of the 2013 Notice is attached as Exhibit C.

9. The 2013 Notice imposed $524,670.80 in late-payment penalty.

10. The 2013 Notice imposed $227,741.08 in interest as of December 13, 2016.

11. Both the 2012 Notice and 2013 Notice (collectively the "Notices of Deficiency") result from the same Illinois audit (audit identification number A1776594944). Unless otherwise noted, all present tense statements of fact and law herein also apply to the time periods subject to this audit and covered by the Notices of Deficiency.

12. The Notices of Deficiency amount to $5,979,218 of tax deficiency in the aggregate, exclusive of penalty and interest.

13. This Tribunal has original jurisdiction over all Department determinations reflected on Notices of Deficiency, among other notices, where the amount at issue exceeds $15,000, exclusive of penalties and interest. 35 ILCS 1010/1-45.

14. A petition is currently pending in this Tribunal for tax years ending December 31, 2010 through December 31, 2011, presenting substantially the same issues.

BACKGROUND

15. PepsiCo is a global food and beverage company.

16. PepsiCo's core business is the manufacture, distribution and sales of consumer food, snack and beverage products under the Pepsi, Lays, Gatorade, Quaker, and Tropicana brands, among others.

Pepsi Bottling Group Acquisition and Integration

17. On or about February 26, 2010, PepsiCo purchased The Pepsi Bottling Group ("PBG") and affiliated entities.

18. Also on or about February 26, 2010, PepsiCo purchased PepsiAmericas, Inc. ("PAS") and affiliated entities.

19. PBG and PAS were the two largest independent bottlers of Pepsi products prior to their acquisition by PepsiCo.

20. At the time of their acquisition, PBG and PAS together employed more than 84,000 people and owned more than $18 billion in assets to carry on their bottling and distribution activities.

21. As a result of the PBG and PAS acquisitions, PepsiCo acquired more than 70 domestic and 120 international entities through which the independent bottlers conducted operations.

22. In order to integrate the new entities, PepsiCo undertook a global restructuring of the acquired bottling operations.

23. PepsiCo consolidated certain foreign operations under Frito-Lay North America, Inc. ("FLNA").

24. PepsiCo formed Global Mobility LLC as a single member LLC owned by FLNA to hold foreign-based U.S. expatriates.

25. These foreign-based U.S. expatriates perform services overseas for a variety of PepsiCo businesses.

26. Global Mobility LLC is treated as a branch of FLNA for federal tax purposes.

27. Approximately 32 of the acquired domestic entities, as well as several PepsiCo holding companies, were eliminated as part of the restructuring.

Captive Insurance Arrangements

28. Mountainview Insurance Co., Inc. ("Mountainview"), a PepsiCo subsidiary, insures risks, including workers' compensation, automobile liability, public liability, and product liability, for PepsiCo affiliates, members and non-members (*e.g.*, transportation companies) of the Illinois unitary business group, in exchange for premiums.

PEPSICO'S ILLINOIS TAX FILINGS

29. PepsiCo, along with its unitary subsidiaries, timely filed an Illinois Income and Replacement Tax Return on a combined basis (an "Illinois Combined Return"), and paid the tax shown due thereon, for tax year 2012 ("Tax Year 2012") and 2013 ("Tax Year 2013," collectively the "Tax Years at Issue").

30. Section 1501(a)(27) of the Illinois Income Tax Act, 35 ILCS 5/101 et seq. (the "IITA") excludes affiliates with more than 80% of their business activity, as measured by property and payroll, outside the United States from an Illinois Combined Return.

31. More than 80% of FLNA's business activity, property and payroll, is outside the United States.

32. FLNA was properly excluded from PepsiCo's 2012 and 2013 Illinois Combined Returns.

33. More than 80% of PepsiCo Puerto Rico, Inc.'s ("Pepsi PR") business activity, property and payroll, is outside the United States.

34. Pepsi PR was properly excluded from PepsiCo's 2012 and 2013 Illinois Combined Returns.

35. IITA Section 1501(a)(27) prohibits the inclusion of insurance companies in an Illinois Combined Return with non-insurance company affiliates.

36. Mountainview is an insurance company.

37. Mountainview was properly excluded from PepsiCo's 2012 and 2013 Illinois Combined Returns.

38. FLNA does not own or maintain property or payroll in Illinois.

39. Pepsi PR does not own or maintain property or payroll in Illinois.

40. Mountainview does not own or maintain property or payroll in Illinois.

41. FLNA, Pepsi PR, and Mountainview did not file separate Illinois tax returns for the Tax Years at Issue.

42. FLNA, Pepsi PR, and Mountainview were not required to file separate Illinois tax returns for the Tax Years at Issue.

PROCEDURAL HISTORY

43. On or about December 22, 2015 the Department initiated the audit of the Tax Years at Issue.

44. As of December 22, 2015, there were approximately 10 months left in the three year statute of limitations applicable to Tax Year 2012.

45. As of December 22, 2015, there were approximately 22 months left in the three year statute of limitations applicable to Tax Year 2013.

46. On or about January 22, 2016, at the request of the Department, Taxpayer signed an IL-872 extending the statute of limitations for Tax Year 2012 until April 17, 2017.

47. On or about January 22, 2016, Taxpayer informed the Department that it would not extend the Tax Year 2012 statute of limitations any further than April 17, 2017.

48. On or about September 12, 2016, the Department issued Information Document Request Number 1 ("IDR 1") requesting extensive information regarding FLNA's business activities with a three day response due date of September 15, 2016.

49. On or about September 15, 2016, Taxpayer responded to IDR 1 stating that, due to the detailed nature and volume of the response required by IDR 1, the information would be provided within 30 days.

50. On or about September 19, 2016, the Department issued Information Document Request Number 2 ("IDR 2") in which it repeated its information request in IDR 1 with a one week response due date of September 26, 2016.

51. On or about September 26, 2016, Taxpayer partially responded to IDR 2.

52. On or about October 18, 2016, the Department issued EDA-25, Auditor's Report, reflecting a total tax deficiency of $5,979,218, exclusive of penalty and interest for Tax Year 2012 and Tax Year 2013 combined.

53. On or about October 18, 2016, the Department issued a Notice of Proposed Deficiency (the "NPD") for the Tax Years at Issue reporting a total tax deficiency of $5,979,218, exclusive of penalty and interest.

54. On or about October 25, 2016, Taxpayer provided additional information requested in IDR 2.

55. On or about October 26, 2016, Taxpayer provided the remaining outstanding information requested in IDR 2.

56. On or about November 4, 2016, the Department issued its Notice of Audit Results reporting a total tax deficiency of $5,979,218 exclusive of penalty and interest.

COUNT I

THE INCLUSION OF FLNA IN PEPSICO'S ILLINOIS COMBINED GROUP IS IMPROPER

57. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-56 as if fully set forth herein.

58. In the 2012 Notice, the Department improperly included FLNA in the 2012 Illinois Combined Return.

59. In the 2013 Notice, the Department improperly included FLNA in the 2013 Illinois Combined Return.

60. The IITA requires members of a unitary business group to file a combined report. 35 ILCS 5/502(e).

61. A unitary business group is defined as "a group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other." 35 ILCS 5/1501(a)(27).

62. A unitary business group does not include "those members whose business activity outside the United States is 80% or more of any such member's total business activity." (referred to as "80/20 Companies") *Id.*

63. For purposes of determining the amount of business activity conducted outside the United States, Illinois law requires taxpayers who apportion their income pursuant to IITA Section 304(a) to use the property and payroll factor rules set forth in Section

304(a); the sales factor is ignored for purposes of determining business conducted outside the United States. 86 Ill. Admin. Code 100.9700(c).

64. Illinois' 80/20 Company computation requires taxpayers to compute a property fraction and a payroll fraction, the numerators of which represent U.S. property and payroll, respectively, and the denominators represent world-wide figures. 86 Ill. Admin. Code 100.9700(c)(2)(B).

65. Illinois respects the federal entity classification rules such that entities that are disregarded for federal income tax purposes are also disregarded for Illinois income tax purposes. 35 ILCS 5/403(a); 35 ILCS 5/1501(a)(4).

66. Global Mobility, a single member LLC, is disregarded for federal income tax purposes.

67. Global Mobility is treated as a division of FLNA, its single member, for federal income tax purposes.

68. Global Mobility's property and payroll factors are considered the property and payroll factors of FLNA, its sole member, for purposes of Illinois' 80/20 Company computation.

69. FLNA apportions its income pursuant to IITA Section 304(a).

70. More than 80% of FLNA's business activity, measured by FLNA's property and payroll, is outside the United States during the Tax Years at Issue.

71. Illinois law prohibits the inclusion of FLNA in PepsiCo's 2012 Illinois Combined Return.

72. Illinois law prohibits the inclusion of FLNA in PepsiCo's 2013 Illinois Combined Return.

73. The Department's inclusion of FLNA in PepsiCo's 2012 Illinois Combined Return is in error.

74. The Department's inclusion of FLNA in PepsiCo's 2013 Illinois Combined Return is in error.

75. The Department made a variety of additional adjustments related to the inclusion of FLNA in the 2012 Illinois Combined Return, all of which must similarly be reversed.

76. The Department made a variety of additional adjustments related to the inclusion of FLNA in the 2013 Illinois Combined Return, all of which must similarly be reversed.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining that the Department's inclusion of FLNA in the 2012 and 2013 Illinois Combined Returns is improper and the Department's assessments with respect to this issue, along with any penalties and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT II

DENIAL OF ELECTION TO SUBTRACT LOSS REIMBURSEMENT RECEIVED FROM CAPTIVE INSURANCE PROVIDER IS IMPROPER

77. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-76 as if fully set forth herein.

78. The Department improperly disallowed the Taxpayer's election to subtract insurance losses incurred by its captive insurance provider as allowed under IITA Section 203(b)(2)(Y) in Tax Years 2012 and 2013.

79. Illinois law requires the addback of insurance premiums paid to a person who would be a member of the Illinois unitary business group but for the Noncombination Company rule. 35 ILCS 5/203(b)(2)(E-14).

80. Illinois law provides a subtraction modification for reimbursements received from a captive insurance company "equal to the amount of the expense or loss (including expenses incurred by the insurance company) that would have been taken into account as a deduction for federal income tax purposes if the expense or loss had been uninsured." 35 ILCS 5/203(b)(2)(Y).

81. In Tax Years 2012 and 2013, the PepsiCo group added back premium expense paid to Mountainview as required by IITA Section 203(b)(2)(E-14).

82. In Tax Years 2012 and 2013, Mountainview incurred insurance losses on insured PepsiCo group claims.

83. The Taxpayer would have deducted those insurance losses on its federal return had it not been insured.

84. In Tax Years 2012 and 2013, Taxpayer made an election under IITA Section 203(b)(2)(Y) to deduct from group income the insurance losses incurred by Mountainview with respect to PepsiCo group claims.

85. The Department's disallowance of Taxpayer's election under IITA Section 203(b)(2)(Y) is improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the 2012 and 2013 adjustments with respect to the addback of Mountainview losses improper and the Department's assessments with respect to this issue, along with penalty and interest, must be abated in its entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT III

INTEREST EXPENSE ADDBACK IS IMPROPER

86. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-85 as if fully set forth herein.

87. The addback of interest expense paid by PepsiCo to Pepsi PR is in error.

88. The IITA requires taxpayers to add back to taxable income certain identified related party expenses. 35 ILCS 5/203(b)(2).

89. This adjustment is required for interest paid to a person who qualifies as an 80/20 Company. 35 ILCS 5/203(b)(2)(E-12).

90. In Section 203(b)(2)(E-12), the IITA provides several exceptions to the addback requirement, including but not limited to:

    a. When the interest is paid to an entity subject to a tax measured by net income in a foreign country;

    b. When interest is paid pursuant to an agreement entered into at arm's-length rates and terms and the principal purpose for the payment is not federal or Illinois tax avoidance; or

    c. If the addback modification is unreasonable.

91. Pepsi PR qualifies as an 80/20 Company.

92. In 2012, PepsiCo paid $17,409,706 in interest to Pepsi PR pursuant to an arm's-length debt agreement (the "Debt Agreement").

93. In 2013, PepsiCo paid $17,867,490 in interest to Pepsi PR pursuant to the Debt Agreement.

94. The Taxpayer erroneously added back the interest expense by not claiming one or more exceptions to which PepsiCo qualifies.

95. Pepsi PR had property and payroll in Puerto Rico in the Years at Issue.

96. Puerto Rico had jurisdiction to subject Pepsi PR to a tax on net income in each of the Years at Issue.

97. Interest paid to Pepsi PR satisfies the subject-to-tax exception to addback provided in IITA Section 203(b)(2)(E-12)(i).

98. PepsiCo's interest paid to Pepsi PR in the Years at Issue was the result of the intercompany Debt Agreement.

99. The terms of the Debt Agreement were entered into at arm's length.

100. The principal purpose of the Debt Agreement was not federal or Illinois tax avoidance.

101. Interest paid to Pepsi PR in the Years at Issue satisfies the arm's length exception to addback provided in IITA Section 203(b)(2)(E-12)(iii).

102. Addback of the interest expense in the Years at Issue is unreasonable.

103. Interest paid to Pepsi PR in the Years at Issue satisfies the unreasonable exception to addback provided in IITA Section 203(b)(2)(E-12)(iv).

104. Addback of PepsiCo's interest expense paid to Pepsi PR is improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the 2012 and 2013 addback of interest expense paid to Pepsi PR improper and adjust PepsiCo's tax liabilities accordingly, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT IV

INCLUSION OF SALES MADE TO MAINE IN PEPSICO'S SALES FACTOR NUMERATOR IS IMPROPER

105. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-104 as if fully set forth herein.

106. In Tax Year 2013, the Department erroneously included in the numerator of PepsiCo's Illinois apportionment factor sales of Quaker Sales & Distribution, Inc. ("QSDI") made to Maine where QSDI was taxable.

107. In computing the Illinois apportionment factor, the IITA requires taxpayers making sales of tangible personal property to include in the sales factor numerator, *i.e.,* throw back, receipts associated with property that is "shipped from an office, store, warehouse, factory or other place of storage [in Illinois] and ... the person is not taxable in the state of the purchaser." 35 ILCS 5/304(a)(3)(B)(ii).

108. A taxpayer is "taxable" in another state if it is (a) subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or (b) another state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does subject the taxpayer to such a tax. 86 Ill. Admin. Code 100.3200(a)(1).

109. In Tax Year 2013, the Department increased PepsiCo's Illinois sales factor numerator by including sales QSDI made to Maine.

110. In Tax Year 2013, PepsiCo filed a Maine corporate income tax return on a unitary basis, which included QSDI.

111. The Department's inclusion of sales made to Maine in the numerator of PepsiCo's Illinois sales factor is improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the inclusion of sales to Maine in PepsiCo's Illinois sales factor numerator was improper and the Department's assessments with respect to this issue, along with penalty and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT V

INCLUSION OF SALES MADE BY MEMBERS WITHOUT ILLINOIS NEXUS IN PEPSICO'S SALES FACTOR NUMERATOR IS IMPROPER

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

113. In Tax Year 2012, the Taxpayer erroneously included in the sales factor numerator Illinois sales of Pepsi-Cola Sales & Distribution, Inc. ("PCS&D").

114. In Tax Year 2013, the Taxpayer erroneously included in the sales factor numerator Illinois sales of FL Dip Co. ("FL Dip").

115. Illinois adopts the principles established in the *Appeal of Joyce, Inc.* Cal. St. Bd. of Equal. (11/23/66), commonly known as the "Joyce Rule." 86 Ill. Admin. Code 100.9720(f).

116. The Joyce Rule provides that sales receipts from a member of a unitary group are only includable in the numerator of the state's sales factor if the member is itself taxable in the state, without regard for activity of any other member of the unitary group. *Appeal of Joyce, Inc.*, No. 66-SBE-070, Cal. St. Bd. of Equal. (11/23/1966).

117. PCS&D does not have any property in Illinois.

118. To the extent PCS&D has any employees in Illinois, those activities are protected under Public Law 86-272.

119. PCS&D is not separately taxable in Illinois.

120. The Department's inclusion of PCS&D sales sourced to Illinois in the sales factor numerator is improper.

121. FL Dip's only business operation is the ownership of 50% of Sabra Dipping Company LLC ("Sabra Dipping").

122. Sabra Dipping has no Illinois property.

123. To the extent Sabra Dipping has any employees in Illinois, those activities are protected under Public Law 86-272.

124. FL Dip has no Illinois property.

125. FL Dip has no Illinois payroll.

126. FL Dip is not separately taxable in Illinois.

127. Inclusion of FL Dip's Illinois sales in the sales factor numerator is improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the inclusion of PCS&D's sales made to Illinois and FL Dip's sales made to Illinois in PepsiCo's Illinois sales factor numerator was improper and any tax associated with this issue, be abated in its entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT VI

INCLUSION OF INTERCOMPANY AMOUNTS IN THE SALES FACTOR NUMERATOR IS IMPROPER

128. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-127 as if fully set forth herein.

129. In the Tax Years at Issue, the Department erroneously included rental and other income of Pepsi Bottling Holdings ("PBH") and Bottling Group Holdings ("BGH") in the numerator of the sales factor without first eliminating intercompany rent and intercompany other income.

130. In determining combined business income apportionable to Illinois, income and deductions arising from intercompany transactions between members of the unitary business group must be eliminated to avoid distortion in the in calculating the apportionment factor. 86 Ill. Admin. Code 100.5270(b)(1).

131. The Department included gross rental and other income of PBH and BGH in the numerator of the sales factor.

132. Rental and other income of PBH and BGH was entirely from intercompany transactions with other members of the Illinois Combined Returns.

133. The Department's inclusion of gross rental and other income of PBH and BGH in the numerator of the sales factor was improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the inclusion of gross rental and other income of PBH and BGH in PepsiCo's Illinois sales factor numerator was improper and the Department's assessments, along with any penalty and interest associated with this issue, be abated in its entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT VII

INCLUSION OF NON-UNITARY PARTNERSHIP IN COMBINED BUSINESS INCOME IS IMPROPER

134. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-133 as if fully set forth herein.

135. In Tax Year 2012, Taxpayer erroneously included income from non-unitary partnerships in combined group income.

136. In Tax Year 2013, the Department erroneously added back income from non-unitary partnerships to combined group income.

137. A unitary business group means, among other criteria, a group of persons related through common ownership. 35 ILCS 5/1501(a)(27).

138. "Common ownership" refers to 50% or more ownership in another entity. 35 ILCS 5/1501(a)(27).

139. A unitary business group also means the members are "functionally integrated through the exercise of strong centralized management." 35 ILCS 5/1501(a)(27).

140. NCJV, Inc. ("NCJV") is a member of the Illinois Combined Returns.

141. NCJV holds a 35% limited partnership interest in Pepsi Bottling Ventures, LLC ("Pepsi Bottling Ventures").

142. NCJV does not control Pepsi Bottling Ventures.

143. NCJV is not unitary with Pepsi Bottling Ventures.

144. Pepsi-Cola Metropolitan Bottling Company ("PMBC") is a member of the Illinois Combined Returns.

145. PMBC holds a 20% limited partnership interest in Pepsi Bend LLC ("Pepsi Bend").

146. PMBC does not control Pepsi Bend.

147. PMBC is not unitary with Pepsi Bend.

148. PMBC holds a 20% limited partnership interest in Pepsi-Cola Bottling of Roseburg LP ("Pepsi Roseburg").

149. PMBC does not control Pepsi Roseburg.

150. PMBC is not unitary with Pepsi Roseburg.

151. The inclusion of income from non-unitary partnerships in combined group income is improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the inclusion of income from Pepsi Bottling Ventures, Pepsi Bend, and Pepsi Roseburg in the unitary group was improper and any tax associated with the Taxpayer's error in Tax Year 2012, and the Department's assessments with respect to this issue in Tax Year 2013, along with penalty and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT VIII

INCLUSION OF NON-UNITARY COOPERATIVE INCOME IS IMPROPER

152. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-151 as if fully set forth herein.

153. In the Tax Years at Issue, the Department improperly added income from North East Hot Fill Co-op, Inc. ("NEHF") to Illinois taxable income.

154. The Illinois unitary business definition provides unitary business activity can "ordinarily be illustrated" when members are in the same general line of business or are steps in a vertically integrated enterprise, and "in either instance, the members are functionally integrated through the exercise of strong centralized management." 35 ILCS 5/1501(a)(27).

155. NEHF is a cooperative entity organized as a corporation.

156. Pepsi Bottling Group LLC ("PBG") owns an interest in NEHF along with other third-party bottlers.

157. The Board of Directors is responsible for managing NEHF's operations.

158. PBG controls 40% of the NEHF Board of Directors.

159. PBG does not control NEHF.

160. PBG does not exercise strong centralized management over NEHF.

161. NEHF is not a member of the Pepsi unitary group.

162. The Department's addition of NEHF's income was improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the inclusion of income from NEHF in the unitary group was improper and the Department's assessments with respect to this issue, along with penalty and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT IX

IN THE ALTERNATIVE, THE INCLUSION OF BOOK INCOME OF NEHF IS IMPROPER

163. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-162 as if set forth herein.

164. In the Tax Years at Issue, if NEHF is unitary with members of the Illinois Combined Return, then the Department improperly added back book income of NEHF.

165. The computation of Illinois base income begins with federal taxable income. 35 ILCS 5/201(b)(1); 35 ILCS 5/201(e)(1).

166. The Illinois Combined Return reports the combined base income of its members. 86 Ill. Admin. Code 100.5270(a).

167. Combined base income is computed "by treating all members of the unitary business group ... as if they constituted a federal consolidated group and by applying the federal regulations for determining consolidated taxable income." 86 Ill. Admin. Code 100.5270(a)(1).

168. The Department's inclusion of NEHF's book income in combined base income was improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the inclusion of NEHF's book income was improper and the Department's assessments with respect to this issue, along with penalty and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT X

IF NEHF IS PROPERLY INCLUDED IN GROUP INCOME, THE FAILURE TO PROVIDE FACTOR RELIEF IS IMPROPER

169. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-168 as if set forth herein.

170. In the Tax Years at Issue, if NEHF is unitary with members of the Illinois Combined Return, then the Department improperly excluded NEHF's gross receipts from the Illinois sales factor denominator.

171. The sales factor includes gross receipts that are included in the computation of federal taxable income and not eliminated in computing combined group income. 86 Ill. Admin. Code 100.3370(a)(2)-(3).

172. If included in the Illinois Combined Return, the Department's failure to include NEHF's gross receipts from activity in its regular course of business in the Illinois sales factor denominator was improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the exclusion of NEHF's gross receipts from the Illinois sales factor was improper and the Department's assessments with respect to this issue, along with penalty and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT XI

THE INCLUSION OF BOOK INCOME OF EPIC ENTERPRISES IS IMPROPER

173. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-172 as if set forth herein.

174. In the Tax Years at Issue, the Department improperly included the book income of Epic Enterprises ("Epic") when computing combined group income.

175. The computation of Illinois base income begins with federal taxable income. 35 ILCS 5/201(b)(1); 35 ILCS 5/201(e)(1).

176. The Illinois Combined Return reports the combined base income of its members. 86 Ill. Admin. Code 100.5270(a).

177. Combined base income is computed "by treating all members of the unitary business group … as if they constituted a federal consolidated group and by applying the federal regulations for determining consolidated taxable income." 86 Ill. Admin. Code 100.5270(a)(1).

178. The Department's inclusion of Epic's book income in combined base income was improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the inclusion of Epic's book income was improper and the Department's assessments with respect to this issue, along with penalty and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT XII

THE INCLUSION OF EPIC ENTERPRISES IN GROUP INCOME WITHOUT FACTOR RELIEF IS IMPROPER

179. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-178 as if set forth herein.

180. In the Tax Years at Issue, when adding the book income of Epic to combined group income, the Department did not include Epic's gross receipts in the Illinois sales factor denominator.

181. The sales factor includes gross receipts that are included in the computation of federal taxable income and not eliminated in computing combined group income. 86 Ill. Admin. Code 100.3370(a)(2)-(3).

182. The Department's failure to include Epic's gross receipts from activity in its regular course of business in the Illinois sales factor denominator was improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the exclusion of Epic's gross receipts from the Illinois sales factor was improper and the Department's assessments with respect to this issue, along with penalty and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT XIII

ADDBACK OF SUBTRACTION MODIFICATIONS RELATED TO FEDERAL TAX CREDITS IS IMPROPER

183. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-182 as if set forth herein.

184. In Tax Year 2013, the Department improperly added back Taxpayer's subtraction modification related to its federal empowerment zone employment and Indian employment credits.

185. Illinois allows a subtraction modification for amounts disallowed as deductions under Internal Revenue Code ("IRC") Section 280C. 35 ILCS 5/203(b)(2)(I).

186. Under IRC Section 280C, if a taxpayer takes advantage of certain tax credits, including the empowerment zone employment credit and the Indian employment credit, the Internal Revenue Service disallows deductions for wages and salaries paid equal to the amount of credits claimed. IRC 280C.

187. In Tax Year 2013, the Taxpayer applied the empowerment zone employment credit and Indian employment credit to offset its federal tax liability.

188. Under IRC 280C, the Taxpayer's deductions for wages and salaries paid were denied equal to the amount of empowerment zone employment credit and Indian employment credit applied.

189. Taxpayer adjusted its Illinois combined group income by subtracting its expenses otherwise disallowed under IRC 280C.

190. The Department added back the Taxpayer's subtraction for its expenses related to its empowerment zone employment credit and Indian employment credit.

191. The Department's addback of Taxpayer's subtraction for expenses disallowed as deductions under IRC Section 280C was improper.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the addback of Taxpayer's allowable deductions under IITA Section 203(b)(2)(I) was improper and the Department's assessments with respect to this issue, along with penalty and interest, be abated in their entirety, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT XIV

ALLOWANCE OF ILLINOIS LOW-INCOME HOUSING CREDIT IS REQUIRED

192. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-191 as if fully set forth herein.

193. In the Tax Years at Issue, Taxpayer engaged in affordable housing development in Illinois.

194. A taxpayer who makes a donation under the Illinois Housing Development Act for the development of affordable housing in Illinois is entitled to an income tax credit equal to 50% of the value of the donation. 35 ILCS 5/214(a).

195. Taxpayer is entitled to an income tax credit equal to 50% of the value of its affordable housing donation in the Tax Years at Issue.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order determining the Taxpayer is entitled to the affordable housing credit in Illinois and any tax due must be abated by the amount of allowable credit, along with such other and further relief the Tax Tribunal deems appropriate in this matter.

COUNT XV

IMPOSITION OF PENALTIES IS IMPROPER

196. PepsiCo hereby restates and realleges the allegations contained in paragraphs 1-195 as if fully set forth herein.

197. Any penalties assessed must be abated for reasonable cause.

198. The Department has assessed late payment penalties in the 2012 Notice.

199. The Department has assessed late payment penalties in the 2013 Notice.

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

201. 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 Ill. Admin. Code § 700.400(b).

202. A taxpayer's filing history is also considered in determining whether the taxpayer acted in good faith. 86 Ill. Admin. Code §700.400(d).

203. PepsiCo made a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion.

204. PepsiCo exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper tax liability in a timely fashion.

205. PepsiCo has a history of timely filing Illinois corporate income tax returns and paying Illinois corporate income tax in a timely manner.

206. The late payment penalties imposed by the Department must be abated for reasonable cause.

WHEREFORE, PepsiCo prays the Tax Tribunal find and enter an order that any penalties assessed by the Department be abated in full and such other and further relief as the Tax Tribunal deems appropriate in this matter.

(Remainder of this page is intentionally blank. Signature page follows.)

PepsiCo Inc.

Date: February 8, 2017

By: ______________________________
An Attorney for Petitioner

Theodore R. Bots (theodore.bots@bakermckenzie.com)
Matthew S. Mock (matthew.mock@bakermckenzie.com)
Julie S. Townsley (julie.townsley@bakermckenzie.com)
BAKER & McKENZIE LLP
300 East Randolph Street #5000
Chicago, Illinois 60601
(312) 861-8000
Attorney No. 90080

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

PROOF OF SERVICE

The undersigned, being first duly sworn upon oath, deposes and states that a copy of the Petition of PepsiCo Inc. and Affiliates has been served upon the below-named party by electronic mail.

Ron Forman
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601
Ronald.Forman@Illinois.gov

Being a duly licensed attorney in the State of Illinois this 8th day of February, 2017.

Theodore R. Bots
BAKER & McKENZIE LLP
300 East Randolph Street #5000
Chicago, Illinois 60601
(312) 861-8000

Under penalties of perjury by law pursuant to 735 ILCS 5/1-109, I certify that the foregoing pleadings were served as set forth above.

Exhibit A

Illinois Department of Revenue

IL-2848 Power of Attorney

Read this information first

Attach a copy of this form to each specific tax return or item of correspondence for which you are requesting power of attorney. You or your representative may also be required to provide a copy of this form when contacting the Illinois Department of Revenue. If you do not properly complete this form, you will be required to submit a new IL-2848.

Step 1: Complete the following taxpayer information (* indicates required field)

1 PepsiCo, Inc.
Taxpayer's name*

3 700 Anderson Hill Road
Taxpayer's street address

2 13-1584302
Taxpayer's identification number(s)*

Purchase NY 10577-1041
City State ZIP

Step 2: Complete the following information (* indicates required field)

4 The taxpayer named above appoints the following representatives as attorneys-in-fact:

Theodore R. Bots	Matthew M. Mock	Julie S. Townsley
Name*	Name*	Name*
Baker & McKenzie LLP	Baker & McKenzie LLP	Baker & McKenzie LLP
Name of firm	Name of firm	Name of firm
300 E. Randolph Street	300 E. Randolph Street	300 E. Randolph Street
Street address*	Street address*	Street address*
Chicago IL 60601	Chicago IL 60601	Chicago IL 60601
City* State* ZIP*	City* State* ZIP*	City* State* ZIP*
(312)861-8845	(312)861-4215	(312)861-8033
Daytime phone number*	Daytime phone number*	Daytime phone number*
Theodore.Bots@bakermckenzie.com	Matthew.Mock@bakermckenzie.com	Julie.Townsley@bakermckenzie.com
E-mail address	E-mail address	E-mail address
Income Tax 2012-13	Income Tax 2012-13	Income Tax 2012-13
Specific tax type* Year or period*	Specific tax type* Year or period*	Specific tax type* Year or period*

The attorneys-in-fact named above shall have, subject to revocation, full power and authority to perform any act that the principals can and may perform, including the authority to receive confidential information. If you wish to limit the power of the attorneys-in-fact, specify the actions they **may not** perform on Line 5.

5 The attorneys-in-fact named above **do not** have the power to do the following:
*Check only the items below you **do not** wish to grant.*

- ☒ endorse or collect checks in payment of refunds.
- ☐ receive checks in payment of any refund of Illinois taxes, penalties, or interest.
- ☐ execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- ☐ execute consents extending the statutory period for assessments or collection of taxes.
- ☐ delegate authority or substitute another representative.
- ☐ file a protest to a proposed assessment.
- ☐ execute offers in compromise or settlement of tax liability.
- ☐ represent the taxpayer before the Illinois Department of Revenue in all proceedings including hearings (requiring representation by an attorney) pertaining to matters specified above.
- ☐ obtain a private letter ruling on behalf of the taxpayer.
- ☐ perform other acts. (explain) ______

6 This power of attorney revokes all prior powers of attorney on file with the Illinois Department of Revenue with respect to the same matters and years or periods covered by this form, except for the following:

Name	Name	Name
Street address	Street address	Street address
City State ZIP	City State ZIP	City State ZIP
(____)____ Daytime phone number	(____)____ Daytime phone number	(____)____ Daytime phone number
Date granted	Date granted	Date granted

Continued on Page 2

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:

Baker & McKenzie LLP / Attn: Theodore R. Bots Name	Name	Name
300 E. Randolph Street, Suite 5000 Street address	Street address	Street address
Chicago IL 60601 City State ZIP	City State ZIP	City State ZIP
(312) 861-8845 Daytime phone number	( ) Daytime phone number	( ) Daytime phone number

Step 3: Taxpayer's signature

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

Taxpayer's signature (individuals only) Print name Date

Spouse's signature Print name Date

Charles F. Mueller Vice President 2/2/2017

If corporation or other entity, signature of officer or authorized agent Print name Title, if applicable Date

Step 4: 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	Jurisdiction (state(s), etc.)	Signature	Date
☒ Attorney ☐ C.P.A. ☐ Enrolled agent	Illinois		2/3/2017
☒ Attorney ☐ C.P.A. ☐ Enrolled agent	Illinois		2/3/2017
☒ Attorney ☐ C.P.A. ☐ Enrolled agent	Illinois		2/3/2017

Step 5: 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

STATE OF **Illinois**
DEPARTMENT OF REVENUE
tax.illinois.gov

#BWNKMGV
#CNXX X213 6937 8X83#
PEPSICO INC
PEPSICO INC & AFFILIATES
ATTN: TAX DEPT 3N LAUREN CARTER
700 ANDERSON HILL RD
PURCHASE NY 10577-1401

December 13, 2016

Letter ID: CNXXX21369378X83

Taxpayer ID:	13-1584302
Audit ID:	A1776594944
Reporting period:	December 2012
Total Deficiency:	$4,339,331.42
Balance due:	$4,339,331.42

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

Constance Beard
Director

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

(217) 524-0424

Statement

Date: December 13, 2016
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Letter ID: CNXXX21369378X83

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

Computation of deficiency	**Reporting period: 31-Dec-2012**
Income or loss	
Federal taxable income	$1,397,889,650.00
Net operating loss deduction	$10,462,776.00
Income tax and replacement tax deduction	$7,782,957.00
Illinois bonus depreciation addition	$100,029,204.00
Related party expenses additions	$266,489,138.00
Distributive share of additions	$2,248,064.00
Other additions	$0.00
Base income or loss	
Foreign dividends subtraction	$168,660,898.00
Illinois bonus depreciation subtraction	$293,280,895.00
Distributive share of subtractions	$2,420,346.00
Other subtractions	$6,861,990.00
Total subtractions	$471,224,129.00
Base income or net loss	$1,313,677,660.00
Income allocable to Illinois	
Non-business income or loss	$0.00
Non-unitary partnership bus. income or loss	$322,440.00
Business income or loss	$1,313,355,220.00
Apportionment formula	
Total sales everywhere	$44,060,961,021.00
Total Illinois sales	$1,559,455,734.00
Apportionment factor	0.035393
Business income/loss apportionable to IL	$46,483,581.00
Nonbusiness income/loss allocable to IL	$0.00
Non-unitary part. business income app. to IL	-$82,621.00
Base income or net loss allocable to IL	$46,400,960.00
Net income	
Base income or net loss	$46,400,960.00
IL net loss deduction (NLD)	$0.00
Net income	$46,400,960.00
Net replacement tax	
Replacement tax	$1,160,024.00
Recapture of investment credits	$0.00
Replacement tax before credits	$1,160,024.00
Replacement tax investment credits	$0.00

Statement

Date: December 13, 2016
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Letter ID: CNXXX21369378X83

Computation of deficiency	**Reporting period: 31-Dec-2012**
Net replacement tax	$1,160,024.00
Net income tax	
Income tax	$3,248,067.00
Recapture of investment credits	$0.00
Income tax before credits	$3,248,067.00
Income tax investment credits	$1,052,227.00
Net income tax	$2,195,840.00
Refund or balance due	
Net replacement tax	$1,160,024.00
Net income tax	$2,195,840.00
Total net income and replacement tax due	$3,355,864.00
Total tax deficiency	$3,355,864.00
Plus late-payment penalty	$671,172.80
Plus interest on tax through December 13, 2016	$312,294.62
Total deficiency	* $4,339,331.42

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

Computation of balance due	**Reporting period: 31-Dec-2012**
Balance due	* $4,339,331.42

Explanation of Audit Adjustments

Income Tax

STATE OF Illinois DEPARTMENT OF REVENUE tax.illinois.gov

#BWNKMGV
#CNXX XXX7 7519 2489#
PEPSICO INC
PEPSICO INC & AFFILIATES
ATTN: TAX DEPT 3N LAUREN CARTER
700 ANDERSON HILL RD
PURCHASE NY 10577-1401

December 13, 2016

Letter ID: CNXXXXX775192489

Taxpayer ID:	13-1584302
Account ID:	11653-34528
Audit ID:	A1776594944
Reporting period:	December 2012

Explanation of adjustments for tax period ending 12/31/2012	Return Impact	Tax impact
We corrected IL-1120, line 1 by changing the composition of your unitary business group, the main adjustment being the inclusion of Frito-Lay North America in the combined return as an eligible member. [35 ILCS 5/1501(a)(27)]	$2,822,348,394.00	$4,522,873.00
We adjusted your addition modifications to reflect the correct addback of the federal bonus depreciation, or the correct reversal of the Illinois depreciation for bonus depreciation assets in the last year you are allowed a federal depreciation deduction, as required to be shown on the Form IL-4562. [35 ILCS 5/203(b)(2)(E-10), (b)(2)(E-11), (c)(2)(G-10), (c)(2)(G-11), (d)(2)(D-5), (d)(2)(D-6)]	$100,029,204.00	$323,741.00
We adjusted your addition modifications to reflect the addback of interest paid to an affiliated company and required to be added back on Schedule 80/20. [Ref: 35 ILCS 5/203(b)(2)(E-12)]	-$214,790,696.00	-$695,161.00
We adjusted your subtraction modifications to reflect the correct amount of Illinois depreciation related to bonus depreciation, assets, and the reversal of the bonus depreciation addback for an asset in the last year you are allowed a federal depreciation deduction for that asset, as required to be shown on Form IL-4562. [35 ILCS 5/203(b)(2)(T), (c)(2)(R), (d)(2)(O)]	$81,042,665.00	-$262,291.00
We disallowed your subtraction modification for losses insured by an affiliated insurance company because there was no corresponding add-back on the insurance company return. Ref: IAC Section 100.2430	-$110,499,389.00	$357,627.00
We adjusted the amount of your allocable non-unitary partnership income/loss.	$1,397,957.00	-$4,524.00
We adjusted your sales by including in the numerator sales of tangible personal property originating in Illinois and delivered to customers in states in which you are not taxable. [86 IL Adm. Code 100.3370(c)(1)(F); 86 IL Adm. Code 100.3200]	$290,795.00	$0.00
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)]	$47,001,516.00	$0.00
Your overall apportionment ratio increased from 3.4068% to 3.5393% as a result of our changes.	$0.00	$165,319.00
We have applied your available income tax credits that were unused on your original return.	$1,052,227.00	-$1,052,227.00

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

Date: December 13, 2016

Letter ID: CNXXXXX775192489
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Account ID: 11653-34528
Audit ID: A1776594944
Reporting period: December 2012

Explanation of adjustments for tax period ending 12/31/2012	Income change	Tax impact
We are imposing a penalty because you did not pay the amount required to be shown due on your return by the due date for payment. Once an audit has been initiated, the late payment penalty is assessed at 15 percent of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the auditor's report issued with the EDA-143-I-APT, Notice of Audit Results, has resulted in this penalty increasing to 20 percent. [35 ILCS 735/3-3(b-20)(2)]		

Exhibit C

Notice of Deficiency

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

STATE OF Illinois DEPARTMENT OF REVENUE tax.illinois.gov

#BWNKMGV
#CNXX XX7X 8695 1841#
PEPSICO INC
PEPSICO INC & AFFILIATES
ATTN: TAX DEPT 3N LAUREN CARTER
700 ANDERSON HILL RD
PURCHASE NY 10577-1401

December 14, 2016

Letter ID: CNXXXX7X86951841

Taxpayer ID:	13-1584302
Audit ID:	A1776594944
Reporting period:	December 2013
Total Deficiency:	$3,375,765.88
Balance due:	$3,375,765.88

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

Constance Beard
Director

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

(217) 524-0424

Statement

Date: December 14, 2016
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Letter ID: CNXXXX7X86951841

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

Computation of deficiency	**Reporting period: 31-Dec-2013**
Income or loss	
Federal taxable income	$1,574,642,751.00
Net operating loss deduction	$0.00
Income tax and replacement tax deduction	$7,796,346.00
Illinois bonus depreciation addition	$178,373,654.00
Related party expenses additions	$178,205,697.00
Distributive share of additions	$22,165,363.00
Other additions	$0.00
Base income or loss	
Foreign dividends subtraction	$187,463,788.00
Illinois bonus depreciation subtraction	$249,604,565.00
Distributive share of subtractions	$3,816,466.00
Other subtractions	$2,781,138.00
Total subtractions	$443,665,957.00
Base income or net loss	$1,517,517,854.00
Income allocable to Illinois	
Non-business income or loss	$0.00
Non-unitary partnership bus. income or loss	-$1,630,463.00
Business income or loss	$1,519,148,317.00
Apportionment formula	
Total sales everywhere	$46,562,947,608.00
Total Illinois sales	$1,470,584,836.00
Apportionment factor	0.031584
Business income/loss apportionable to IL	$47,980,780.00
Nonbusiness income/loss allocable to IL	$0.00
Non-unitary part. business income app. to IL	-$174,836.00
Base income or net loss allocable to IL	$47,805,944.00
Net income	
Base income or net loss	$47,805,944.00
IL net loss deduction (NLD)	$0.00
Net income	$47,805,944.00
Net replacement tax	
Replacement tax	$1,195,149.00
Recapture of investment credits	$0.00
Replacement tax before credits	$1,195,149.00
Replacement tax investment credits	$0.00

Statement

Date: December 14, 2016
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Letter ID: CNXXXX7X86951841

Computation of deficiency	**Reporting period: 31-Dec-2013**
Net replacement tax	$1,195,149.00
Net income tax	
Income tax	$3,346,416.00
Recapture of investment credits	$0.00
Income tax before credits	$3,346,416.00
Income tax investment credits	$1,918,211.00
Net income tax	$1,428,205.00
Refund or balance due	
Net replacement tax	$1,195,149.00
Net income tax	$1,428,205.00
Total net income and replacement tax due	$2,623,354.00
Total tax deficiency	$2,623,354.00
Plus late-payment penalty	$524,670.80
Plus interest on tax through December 13, 2016	$227,741.08
Total deficiency	* $3,375,765.88

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

Computation of balance due	**Reporting period: 31-Dec-2013**
Balance due	* $3,375,765.88

Explanation of Audit Adjustments

Income Tax

STATE OF Illinois DEPARTMENT OF REVENUE tax.illinois.gov

#BWNKMGV
#CNXX X197 X584 72X3#
PEPSICO INC
PEPSICO INC & AFFILIATES
ATTN: TAX DEPT 3N LAUREN CARTER
700 ANDERSON HILL RD
PURCHASE NY 10577-1401

December 14, 2016
Letter ID: CNXXX197X58472X3

Taxpayer ID:	13-1584302
Account ID:	11653-34528
Audit ID:	A1776594944
Reporting period:	December 2013

Explanation of adjustments for tax period ending 12/31/2013	Return Impact	Tax Impact
We corrected IL-1120, line 1 by changing the composition of your unitary business group, the main adjustment being the inclusion of Frito-Lay North America in the combined return as an eligible member. [35 ILCS 5/1501(a)(27)]	$2,374,671,181.00	$3,829,098.00
We adjusted your addition modifications to reflect the correct addback of the federal bonus depreciation, or the correct reversal of the Illinois depreciation for bonus depreciation assets in the last year you are allowed a federal depreciation deduction, as required to be shown on the Form IL-4562. [35 ILCS 5/203(b)(2)(E-10), (b)(2)(E-11), (c)(2)(G-10), (c)(2)(G-11), (d)(2)(D-5), (d)(2)(D-6)]	$174,777,844.00	$529,830.00
We adjusted your addition modifications to reflect the addback of interest paid to an affiliated company and required to be added back on Schedule 80/20. [Ref: 35 ILCS 5/203(b)(2)(E-12)]	-$1,941,189.00	-$5,885.00
We adjusted your subtraction modifications to reflect the correct amount of Illinois depreciation related to bonus depreciation, assets, and the reversal of the bonus depreciation addback for an asset in the last year you are allowed a federal depreciation deduction for that asset, as required to be shown on Form IL-4562. [35 ILCS 5/203(b)(2)(T), (c)(2)(R), (d)(2)(O)]	$83,926,537.00	-$254,419.00
We disallowed your subtraction modification for losses insured by an affiliated insurance company because there was no corresponding add-back on the insurance company return.	-$138,423,434.00	$419,624.00
We adjusted the amount of your allocable non-unitary partnership income/loss.	-$23,211,533.00	$70,365.00
We adjusted your sales by including in the numerator sales of tangible personal property originating in Illinois and delivered to customers in states in which you are not taxable. [86 IL Adm. Code 100.3370(c)(1)(F); 86 IL Adm. Code 100.3200]	$2,339,746.00	$0.00
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)]	$38,175,942.00	$0.00
We have decreased your overall apportionment factor from 3.1910% to 3.1584% as a result of our changes.	$0.00	-$47,048.00
We have applied your available income tax credits that were unused on your original return.	$1,918,211.00	-$1,918,211.00

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

Date: December 14, 2016

Letter ID: CNXXX197X58472X3
Name: PEPSICO INC
Taxpayer ID: 13-1584302
Account ID: 11653-34528
Audit ID: A1776594944
Reporting period: December 2013

Explanation of adjustments for tax period ending 12/31/2013	Income change	Tax impact
We are imposing a penalty because you did not pay the amount required to be shown due on your return by the due date for payment. Once an audit has been initiated, the late payment penalty is assessed at 15 percent of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the auditor's report issued with the EDA-143-I-APT, Notice of Audit Results, has resulted in this penalty increasing to 20 percent. [35 ILCS 735/3-3(b-20)(2)]		