

4. The Department issued to Petitioner the Notices under dispute on April 11, 2018, for the tax periods ending December 31, 2013 and December 31, 2014 (hereinafter “tax years at issue”), assessing tax, penalty and interest deficiencies of \$135,368.92 and \$326,680.52. A copy of the Notices is attached.

JURISDICTION

5. The Tax Tribunal has jurisdiction pursuant to the Illinois Independent Tax Tribunal Act of 2012, 35 ILCS 1010, because the alleged tax liability in question from the Illinois Income Tax Act (hereinafter “IITA”) in the aggregate exceeds, \$15,000, exclusive of penalties and interest, and because Petitioner has remitted the \$500 filing fee and filed this Petition within 60 days of the Notices of Deficiency.

BACKGROUND AND RELEVANT FACTS

6. Petitioner is a Corporation operating in Illinois.
7. Petitioner operates information and communication technology (“ICT”) systems for multinational corporations and public-sector institutions. The services Petitioner offers include: corporate voice solutions, Ethernet WAN solutions, business Internet access, IP-VPN, LAN solutions, leased links/dedicated lines, managed VoIP networks, and voice solutions. Petitioner also provides application management, corporate performance management, CRM solutions, desktop suite services and solutions, security services and solutions, service-oriented architecture services, systems integration, and z/OS storage management suite.
8. Petitioner was founded in 1990 and has offices in Illinois, Texas, Arizona, New York, Florida and Michigan. Petitioner operates as a subsidiary of T-Systems International GmbH (hereinafter “Petitioner’s Foreign Parent” or “Foreign Parent”).

9. Petitioner's main operation is network hosting services, including providing SAP to mid-market and larger companies via three data centers located in Phoenix, AZ, Jacksonville, FL and Houston, TX.
10. Petitioner has both US and international sales.
11. The majority of Petitioner's foreign sales relate to services performed for Petitioner's Foreign Parent which are ordered from the Foreign Parent's office in Germany.
12. The services provided to Petitioner's Foreign Parent include services related to networking sales, where Petitioner provides the US portion of the network to a third party.
13. Petitioner invoices the Foreign Parent at the Foreign Parent's location in Germany for all these services.
14. The Foreign Parent then invoices the third-party customer as part of the overall contract agreement between the third party and the foreign parent.
15. Petitioner's Foreign Parent is not required to file a US tax return, cannot file as part of Petitioner's Illinois unitary return pursuant to the 80/20 provisions of the IITA and is not required to file any other state income tax returns.
16. Petitioner's Foreign Parent files a tax return in Germany.
17. Petitioner files as part of a consolidated US tax return.
18. Petitioner files as part of an Illinois unitary income tax return. The aforementioned US and Illinois unitary income tax return was timely filed (with Petitioner included for the 2013 and 2014 tax years at issue).
19. Petitioner is not required to file a foreign tax return.
20. As part of the Illinois unitary return, Petitioner included other income and income from all of its sales, including sales to its Foreign Parent, as part of its Illinois taxable income.
21. Petitioner also included receipts from the other income and all sales in its Illinois apportionment according to greater income-producing activity and market-based sourcing methodologies.
22. The other income amount at issue is comprised of various income generating transactions.

23. Each separate other income stream was sourced to Illinois and other states based on the cost of performance methodology.
24. The Department conducted an audit of the Petitioner's income tax returns for the tax periods ending December 31, 2013 and December 31, 2014.
25. The auditor adjusted the sales factor denominator to "exclude sales of services to customers in states in which the Petitioner was not taxable."
26. Pursuant to this change, the sales factor denominator was decreased to exclude the sales provided to the third parties and invoiced to the parent.
27. The auditor also adjusted the sales factor numerator to include in Petitioner's Illinois receipts what the auditor contends were receipts "for which the majority of the income-producing activities were performed in Illinois."
28. Pursuant to this change, the auditor included certain other income receipts in the numerator of the Illinois sales factor.
29. The Department issued a Notice of Deficiency on April 11, 2018 for the audit period ending December 31, 2013 assessing a deficiency of \$135,368.92 including additional tax of \$113,110, penalty of \$13,306.94 and interest of \$8,951.98.
30. The Department issued a Notice of Deficiency on April 11, 2018 for the audit period ending December 31, 2014 assessing a deficiency of \$326,680.52 including additional tax of \$262,617, penalty of \$43,336.69 and interest of \$20,726.83.

APPLICABLE LAW AND REGULATIONS

Petitioner relies upon the following authority to dispute the Department's assessments:

35 ILCS 5/303

...

(f) Taxability in other state. For purposes of allocation of income pursuant to this Section, a taxpayer is taxable in another state if:

(1) In that state he is 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

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(g) Cross references.

(1) For allocation of interest and dividends by persons other than residents, see Section 301(c)(2).

(2) For allocation of nonbusiness income by residents, see Section 301(a). ...

35 ILCS 5/304(a)

...

(3) Sales Factor

(A) The sales factor is a fraction, the numerator of which is the total sales of the person in this State during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year.

...

(C-5) For taxable years ending on or after December

31, 2008, sales, other than sales governed by paragraphs (B), (B-1), (B-2), (B-5), and (B-7), are in this State if any of the following criteria are met:

(i) Sales from the sale or lease of real property are in this State if the property is located in this State.

(ii) Sales from the lease or rental of tangible personal property are in this State if the property is located in this State during the rental period. Sales from the lease or rental of tangible personal property that is characteristically moving property, including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or

mobile equipment are in this State to the extent that the property is used in this State.

(iii) In the case of interest, net gains (but not less than zero) and other items of income from intangible personal property, the sale is in this State if:

(a) in the case of a taxpayer who is a dealer in the item of intangible personal property within the meaning of Section 475 of the Internal Revenue Code, the income or gain is received from a customer in this State. For purposes of this subparagraph, a customer is in this State if the customer is an individual, trust or estate who is a resident of this State and, for all other customers, if the customer's commercial domicile is in this State. Unless the dealer has actual knowledge of the residence or commercial domicile of a customer during a taxable year, the customer shall be deemed to be a customer in this State if the billing address of the customer, as shown in the records of the dealer, is in this State; or

(b) in all other cases, if the income-producing activity of the taxpayer is performed in this State or, if the income-producing activity of the taxpayer is performed both within and without this State, if a greater proportion of the income-producing activity of the taxpayer is performed within this State than in any other state, based on performance costs.

(iv) Sales of services are in this State if the services are received in this State. For the purposes of this section, gross receipts from the performance of services provided to a corporation, partnership, or trust may only be attributed to a state where that corporation, partnership, or trust has a fixed place of business. If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the service does not have a fixed place of business, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed. If the taxpayer is not taxable in the state in which the services are received, the sale must be excluded from both the numerator and the denominator of the sales factor. The Department shall adopt rules prescribing where specific types of service are received, including, but not limited to, publishing, and utility service.

Illinois Regulation Section 100.3200 Taxability in Other State (IITA Section 303)

a) General definition

1) For purposes of allocation of nonbusiness income and for purposes of the sales factor used in apportioning business income, a taxpayer is taxable in another state if:

A) in that state he or she is 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 [35 ILCS 5/303(f)(1)]; or

B) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not subject the taxpayer to such a tax [35 ILCS 5/303(f)(2)].

2) A taxpayer is subject to one of the specified taxes in subsection (a)(1)(A) in a particular state only if he or she is subject to the tax by reason of income producing activities in that state. For example, a corporation that pays a minimum franchise tax in order to qualify for the privilege of doing business in a state is not subject to tax by that state within the meaning of subsection (a)(1)(A) if the amount of that minimum tax bears no relation to the corporation's activities within that state. Further, a taxpayer claiming to be taxable in another state under the test set forth in subsection (a)(1)(A) must establish not only that under the laws of that state he or she is subject to one of the specified taxes, but that he or she, in fact, pays the tax. If a taxpayer is subject to one of the taxes specified in subsection (a)(1)(A) but does not, in fact, pay the tax, the taxpayer may not claim to be taxable in the state imposing the tax under the test set forth in subsection (a)(1)(A) or (a)(1)(B). (See *Dover Corp. v. Dept. of Revenue*, 271 Ill. App. 3d 700 (1995).) On the other hand, if a taxpayer is not subject in a given state to any of the taxes specified in subsection (a)(1)(A) but the taxpayer establishes that his or her activities in that state are such as to give the state jurisdiction to subject him or her to a net income tax, then, under the test set forth in this subsection (a)(2), the taxpayer is taxable in that state, notwithstanding the fact that that state has not enacted legislation subjecting him or her to the tax. For purposes of this Section:

A) A net income tax is a tax for which an individual may claim a deduction under 26 USC 164(a)(3) or for which a foreign tax credit may be claimed under 26 USC 901.

B) In the case of any state other than a foreign country or political subdivision of a foreign country, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax will be determined under the Constitution, statutes and treaties of the United States. Such a state does not have jurisdiction to subject the taxpayer to a net income tax if it is prohibited from imposing that tax by reason of the provisions of Public Law 86-272 (15 USC Sections 381-385). See 100.9720 of this Part for guidance on nexus standards under the Constitution and statutes of the United States.

C) In the case of any foreign country or political subdivision of a foreign country, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax will be determined as if the foreign country or political subdivision were a state of the United States or a political subdivision of a U.S. state. A person who is not required to pay net income tax by a foreign country or political subdivision as the result of a treaty provision exempting certain persons, business activities or sources of income from tax is not subject to net income tax in that jurisdiction.

D) A person is not subject to tax in another state or in a foreign country under subsection (a)(1)(B) if that state or country imposes a tax on net income, unless he or she can show a specific provision of that state's or country's constitution, statutes or regulations, or a holding of that state's or country's courts or taxing authorities, that exempts the person from taxation even though that person could be subject to a net income tax under the Constitution, statutes and treaties of the United States.

b) Examples. Section 100.3200 of this Part may be illustrated by the following examples:

1) EXAMPLE 1. A corporation, although subject to the provisions of the net income tax statute imposed by X state, has never filed income tax returns in that jurisdiction and has never paid income tax to X. For purposes of allocation and apportionment of A's income, A is not taxable in X state because it does not meet the test specified in either subsection (a)(1)(A) or (1)(B).

2) EXAMPLE 2. B corporation, an Illinois corporation, is actively engaged in manufacturing farm equipment in Y foreign country. Y does not impose a franchise tax measured by net income or a corporate stock tax. It does impose a franchise tax for the privilege of doing business, but B corporation is not subject to that tax because it applies only to corporations incorporated under Y's laws. Y also imposes a net income tax upon foreign corporations doing business within its boundaries, but B is not subject to that tax because the income tax statute grants tax exemption to corporations manufacturing farm equipment. For purposes of allocation and apportionment of B's income, B is taxable in Y country. B does not meet the test specified in subsection (a)(1)(A), but does meet the test specified in subsection (a)(1)(B), since Y has jurisdiction to impose a net income tax on B.

(Source: Amended at 34 Ill. Reg. 12891, effective August 19, 2010)

Illinois Regulation Section 100.3370 Sales Factor (IITA Section 304)

...

b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the person from transactions and activity in the regular course of its trade or business, except receipts excluded under 86 Ill. Adm. Code 100.3380(c).

c) Numerator. The numerator of the sales factor shall include the gross receipts attributable to this State and derived by the person from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to those gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

1) Sales of Tangible Personal Property in this State

A Gross receipts from the sales of tangible personal property (except sales to the United States Government) (see subsection (c)(2)) are in this State:

- i) if the property is delivered or shipped to a purchaser within this State regardless of the f.o.b. (free on board) point or other conditions of sale; or
- ii) if the property is shipped from an office, store, warehouse, factory or other place of storage in this State and the taxpayer is not taxable in the state of the purchaser. However, premises owned or leased by a person who has independently contracted with the taxpayer for the printing of newspapers, periodicals or books shall not be deemed to be an office, store, warehouse, factory or other place of storage.....

3) For taxable years ending on or after December 31, 1999, *gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property* that are not excluded from the sales factor under subsection (a)(2)(F) are included in the numerator of the sales factor *to the extent the item is utilized in this State during the year the gross receipts are included in gross income.* (IITA Section 304(a)(3)(B-1)) For purposes of this subsection (c)(3):

A) *A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If a patent is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts of the licensee or purchaser from sales or leases of items produced, fabricated, manufactured, or processed within that state using the patent and of patented items produced within that state, divided by the total of the gross receipts for all states in which the patent is utilized.* (IITA Section 304(a)(3)(B-1)(ii)(I))

B) *A copyright is utilized in a state to the extent that printing or other publication originates in the state.* Printing or other publication originates at the place at which the licensee of the copyright incorporates the copyrighted material into the physical medium by which it will be delivered to the purchaser of the material or, if the copyrighted material is delivered to the purchaser without use of a physical medium, the place at which delivery of the copyrighted material to the person purchasing the material from the licensee originates. *If a copyright is*

utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts from sales or licenses of materials printed or published in that state divided by the total of the gross receipts for all states in which the copyright is utilized. (IITA Section 304(a)(3)(B-1)(ii)(II))

C) Trademarks and other items of intangible personal property governed by this subsection (c)(3) are utilized in the state in which the commercial domicile of the licensee or purchaser is located. (IITA Section 304(a)(3)(B-1)(ii)(III))

D) If the place of utilization of an item of property under subsection (c)(3)(A), (B) or (C) cannot be determined from the taxpayer's books and records or from the books and records of any person related to the taxpayer within the meaning of 26 USC 267(b), the gross receipts attributable to that item shall be excluded from both the numerator and the denominator of the sales factor. (IITA Section 304(a)(3)(B-1)(iii))

4) For taxable years ending on or after December 31, 2013, gross receipts from winnings under the Illinois Lottery Law [20 ILCS 1605] and from the assignment of a prize under Section 13-1 of the Illinois Lottery Law are received in this State. (IITA Section 304(a)(3)(B-8))

5) For taxable years ending prior to December 31, 2008, gross receipts from transactions not governed by the provisions of subsection (c)(1), (2), (3) or (4) and, for taxable years ending on or after December 31, 2008, from transactions involving intangible personal property when the taxpayer is not a dealer with respect to the intangible personal property, are attributed to this State if the income producing activity that gave rise to the receipts is performed wholly within this State. Also, gross receipts are attributed to this State if, with respect to a particular item of income, the income producing activity is performed in this State, based on costs of performance.

A) **Income Producing Activity Defined.** The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the person in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a person, such as those conducted on its behalf by an independent contractor. The mere holding of intangible personal property is not, of itself, an income producing activity.

Accordingly, the income producing activity includes but is not limited to the following:

- i) The rendering of personal services by employees or the utilization of tangible and intangible property by the person in performing a service.
- ii) The sale, rental, leasing, licensing or other use of real property.
- iii) The rental, leasing, licensing or other use of tangible personal property.
- iv) The sale, licensing or other use of intangible personal property.

B) **Costs of Performance Defined.** The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the person.

C) **Application.** Receipts sourced under this subsection (c)(5) in respect to a particular income producing activity are in this State if:

- i) the income producing activity is performed wholly within this State; or

ii) the income producing activity is performed both in and outside this State and, based on costs of performance, a greater proportion of the income producing activity is performed in this State than without this State (for taxable years ending prior to December 31, 2008) or a greater proportion of the income-producing activity of the taxpayer is performed within this State than in any other state (for taxable years ending on or after December 31, 2008).

D) Special Rules. The following are special rules for determining when receipts from the income producing activities described below are in this State.

i) Gross receipts from the sale, lease, rental or licensing of real property are in this State if the real property is located in this State.

ii) Gross receipts from the rental, lease, or licensing of tangible personal property are in this State if the property is located in this State. The principal cost of performance in a rental, leasing or licensing transaction is the depreciation or amortization of the tangible personal property, and the depreciation or amortization expense is incurred in the state in which the tangible personal property is located. The rental, lease, licensing or other use of tangible personal property in this State is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this State during the rental, lease or licensing period, gross receipts attributable to this State shall be measured by the ratio which the time the property was physically present or was used in this State bears to the total time or use of the property everywhere during that period.

EXAMPLE: Corporation X is the owner of 10 railroad cars. During the year, the total of the days each railroad car was present in this State was 50 days. The receipts attributable to the use of each of the railroad cars in this State are a separate item of income. Total receipts attributable to this State shall be determined as follows: $(10 \times 50) / 3650 \times \text{Total Receipts}$

iii) Gross receipts for the performance of personal services are attributable to this State to the extent those services are performed partly within and partly without this State, the gross receipts for the performance of those services shall be attributable to this State only if a greater portion of the services were performed in this State, based on costs of performance. Where services are performed partly within and partly without this State and the services performed in each state constitute a separate income producing activity, the gross receipts for the performance of services attributable to this State shall be measured by the ratio that the time spent in performing the services in this State bears to the total time spent in performing the services everywhere.

Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to the gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

EXAMPLE 1: Corporation X, a road show, gave theatrical performances at various locations in State X and in this State during the tax period. All gross receipts from performances given in this State are attributed to this State.

EXAMPLE 2: A public opinion survey corporation conducted a poll by its employees in State X and in this State for the sum of \$9,000. The project required 600 man hours to obtain the basic data and prepare the survey report. Two hundred of the 600 man hours were expended in this State. The receipts attributable to this State are \$3,000, calculated as follows:

$200/600 \times \$9,000$

6) For taxable years ending on or after December 31, 2008, gross receipts from transactions not governed by the provisions of subsection (c)(1), (2), (3) or (4) *are in this State if any of the following criteria are met:*

A) *Sales from the sale or lease of real property are in this State if the property is located in this State.* (IITA Section 304(a)(3)(C-5)(i))

B) *Sales from the lease or rental of tangible personal property are in this State if the property is located in this State during the rental period. Sales from the lease or rental of tangible personal property that is characteristically moving property, including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, are in this State to the extent that the property is used in this State.* (IITA Section 304(a)(3)(C-5)(ii))

C) *In the case of interest, net gains (but not less than zero) and other items of income from intangible personal property, the sale is in this State if:* i) *in the case of a taxpayer who:*

- *is a dealer in the item of intangible personal property within the meaning of 26 USC 475, the income or gain is received from a customer in this State.* A taxpayer is a dealer with respect to an item of intangible personal property if the taxpayer is a dealer with respect to the item under 26 USC 475(c)(1), or would be a dealer with respect to the item under 26 USC 475(c)(1) if the item were a security as defined under 26 USC 475(c)(2). *For purposes of this subsection (c)(6)(C)(i), a customer is in this State if the customer is an individual, trust or estate who is a resident of this State and, for all other customers, if the customer's commercial domicile is in this State. Unless the dealer has actual knowledge of the residence or commercial domicile of a customer during a taxable year, the customer shall be deemed to be a customer in this State if the billing address of the customer, as shown in the records of the dealer, is in this State.* A dealer shall treat the person with whom it engages in a transaction as the customer, even when that person is acting on behalf of a third party, unless the dealer has actual knowledge of the party on whose behalf the person is acting. If a taxpayer is a dealer with respect to an item of intangible personal property and recognizes gain or loss with respect to that item other than in connection with a transaction with a customer (for example, unrealized gain or loss from marking the item to market under 26 USC 475), that gain or loss shall be excluded from the numerator and denominator of the sales factor (IITA Section 304(a)(3)(C-5)(iii)(a)) or

- *is not a dealer with respect to the item of intangible personal property, if the income-producing activity of the taxpayer is performed in this State or, if the income-producing activity of the taxpayer is performed both within and without this State, if a greater proportion of the income-producing activity of the taxpayer is performed within this State than in any other state, based on performance costs.* (IITA Section 304(a)(3)(C-5)(iii)(b)) (See subsection (c)(5) of this Section.)

ii) For purposes of this subsection (c)(6)(C), an item of "intangible personal property" includes only an item that can ordinarily be resold or otherwise recovered by the person acquiring the item from the taxpayer, and does not include any obligation of the taxpayer to make any payment, perform any act, or otherwise provide anything of value to another person.

EXAMPLE 1. A ticket to attend a sporting event would not be an item of intangible personal property for the owner of the stadium who issues the ticket and is obliged to grant admission to the holder of the ticket. Rather, the sale of the ticket is a prepayment for a service to be provided. However, the ticket would be an item of intangible personal property in the hands of the original

purchaser or any subsequent purchaser of the ticket, and a ticket broker engaged in the business of buying and reselling tickets would be a dealer with respect to the ticket.

EXAMPLE 2. A taxpayer selling canned computer software is selling intangible personal property. (*First National Bank of Springfield v. Dept. of Revenue*, 85 Ill.2d 84 (1981)) If the taxpayer sells software to customers in the ordinary course of its business, it is a dealer with respect to those sales. In contrast, a taxpayer providing programming or maintenance services to its customers is selling services rather than intangible personal property.

EXAMPLE 3. A taxpayer administers a "rewards program" for a group of unrelated businesses. Under the program, a customer of one business can earn discounts or rebates on products and services provided by any of the businesses. As each customer earns rewards, measured in "units", from one of the businesses, that business pays a specified amount per unit to the taxpayer. When a customer uses units earned in the program to purchase products or services at a discount from a participating business, the taxpayer pays that business a specified amount per unit used by the customer. Rebates may be paid to the customer directly by the taxpayer or by one of the businesses, which is then reimbursed by the taxpayer. To the extent payments made to the taxpayer by businesses awarding units exceed the payments the taxpayer must make for discounts and rebates, the excess is payment for operating the program. The units awarded are obligations of the taxpayer to make payments to the business providing products or services at a discount or to pay rebates. Accordingly, payments received by taxpayer from the participating businesses for units awarded are not income from sales of intangible personal property by the taxpayer.

D) *Sales of services are in this State if the services are received in this State.* (IITA Section 304(a)(3)(C-5)(iv))

i) General Rule. Gross receipts from services are assigned to the numerator of the sales factor to the extent that the receipts may be attributed to services received in Illinois.

ii) A contract that involves the provision of a service by the taxpayer and the use of property of the taxpayer by the service recipient shall be treated as a sale of service unless the contract is properly treated as a lease of property under 26 USC 7701(e)(1), taking into account all relevant factors, including whether:

- the service recipient is in physical possession of the property;
- the service recipient controls the property;
- the service recipient has a significant economic or possessory interest in the property;
- the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract;
- the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient; and
- the total contract price does not substantially exceed the rental value of the property for the contract period.

EXAMPLE: A taxpayer selling access to an online database or applications software, and who is required to perform regular update services to the database or software, retains control over the contents of the database or software, and provides access to the same database or software to multiple customers is not selling or licensing an item of intangible personal property to its customers, but rather is providing a service.

iii) Services received in this State include, but are not limited to:

- When the subject matter of the service is an item of tangible personal property, the service is received in this State if possession of the property is restored to the recipient of the service under the principles in subsection (c)(1) for determining whether a sale of that property is in this State.

EXAMPLE 1. A customer returns a computer to the manufacturer for repair. The manufacturer performs the repairs in Indiana and ships the computer to the customer's Illinois address. The service is received in this State.

EXAMPLE 2. Individual purchases clothing from Merchant at a store in this State, using a credit card issued by Bank A pursuant to a licensing agreement with Credit Card Company. Credit Card Company is not a financial organization required to apportion its business income under Section 100.3405. Bank A remits the purchase price to Credit Card Company, which deposits the purchase price with Merchant's bank, minus a fee or discount. All fees and discounts earned by Credit Card Company in connection with this purchase are for services received in this State.

- When the subject matter of the service is an item of real property, the service is received in the state in which the real property is located.

EXAMPLE 3. Individual purchases a parcel of land in Illinois and constructs a house on the parcel. Services performed at an architect's office in Wisconsin regarding the design and construction of the house are received in this State.

- When the service is performed on or with respect to the person of an individual (for example, medical treatment services), the service is received in the state in which the individual is located at the time the service is performed.

- Services performed by a taxpayer that are directly connected to or in support of services received in this State are also services received in this State.

EXAMPLE 4. Individual purchases automobile repair services from Automobile Dealership at its facility located in this State, using a credit card issued by Bank A pursuant to a licensing agreement with Credit Card Company. Bank A remits the purchase price to Credit Card Company, which deposits the purchase price with Automobile Dealership's bank, minus a fee or discount. All fees and discounts earned by Credit Card Company in connection with this purchase are for services received in this State.

EXAMPLE 5. Services performed by an investment fund on behalf of an investor are received in this State if the investor resides in this State (in the case of an individual) or has its ordering or billing address in this State (for other investors). In the case of services provided by Taxpayer to or on behalf of the investment fund that are directly connected with services provided separately to the investors, such as preparation of communications and statements to investors, and allocations of earnings and distributions to investors, the service is also received in this State to the extent the investors reside (or have their ordering or billing address) in this State.

Accordingly, receipts of Taxpayer for these services are allocated to this State on the basis of the ratio of: the average of the outstanding shares in the fund owned by shareholders, partners or other investors residing (or having their ordering or billing address) within this State at the beginning and end of each taxable year of the taxpayer; and the average of the total number of outstanding shares in the fund at the beginning and end of each year. Residence or ordering or billing address of the shareholder, partner or other investor is determined by the mailing address in the records of the investment fund or the taxpayer. Services provided to an investment fund that are not directly connected to or in support of services provided separately to investors, such as brokerage services or investment advising, are not received by the customer at the location of its investors.

iv) Special Rules

- Under IITA Section 304(a)(3)(C-5)(iv), *if the state where the services are received is not readily determinable, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business, or, if the ordering office cannot be determined, at the office of the customer to which the services are billed.* If the service is provided to an individual who provides a residential address as the place from which the services are ordered or to which the services are billed, rather than an office address, the residential address shall be used. For purposes of this provision, the state where services are received is not readily determinable if the facts necessary to make the determination are not contained in the books and records of the taxpayer or any person related to the taxpayer within the meaning of 26 USC 267(b) or if the available facts would allow reasonable persons to reach different determinations of the state in which the services were received.

- Under IITA Section 304(a)(3)(C-5)(iv), *if the services are provided to a corporation, partnership, or trust and the services are received in a state in which the corporation, partnership, or trust does not maintain a fixed place of business (as defined in Section 100.3405(b)(1)), the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business, or, if the ordering office cannot be determined, at the office of the customer to which the services are billed.* For purposes of this provision, in the case of services performed by the taxpayer as a subcontractor or as an agent acting on behalf of a principal, if either the contractor or principal has a fixed place of business in the state in which the services are received or the customer of the contractor or principal either is an individual or has a fixed place of business in the state in which the services are received, the service will be treated as received in a state in which the customer of the taxpayer has a fixed place of business.

- Under IITA Section 304(a)(3)(C-5)(iv), *if the taxpayer is not taxable in the state in which the services are received or deemed to be received, the gross receipts attributed to those services must be excluded from both the numerator and denominator of the sales factor.* (See Section 100.3200 for guidance on determining when a taxpayer is taxable in another state.)

(Source: Amended at 41 Ill. Reg. 10662, effective August 3, 2017).

**ERROR I – PETITIONER’S SALES OF SERVICES AT ISSUE SHOULD NOT BE
“THROWN-OUT” PURSUANT TO 35 ILCS 5/304(a)(3)(C-5)(iv) BECAUSE
PETITIONER IS REQUIRED TO INCLUDE SUCH SALES IN THE SALES FACTOR
PURSUANT TO 35 ILCS 5/304(a)(3)(C-5)(iv) AND 35 ILCS 5/303(f)**

31. Petitioner re-alleges and reincorporates paragraphs 1-30 of the Petition herein.
32. As indicated in the facts above, Petitioner has sales of services to customers located in foreign countries in addition to sales of services to customers located throughout the United States.
33. Petitioner’s 2013 and 2014 Illinois income tax returns at issue correctly include Petitioner’s total service sales in Petitioner’s sales factor denominator pursuant to 35 ILCS 5/304.¹
34. Petitioner sourced the sales of services at issue to the required State pursuant to the provisions of 35 ILCS 5/304(a)(3)(C-5)(iv) using of the following required determination order: 1) the fixed place of business the service is received; 2) the location of the customer’s office from which the service was ordered; or 3) the customer’s office to which the service was billed.
35. Petitioner filed state income tax returns in Illinois and other states for the tax years at issue as required by the laws of each State as the business activity of providing services subjects Petitioner to taxation in each jurisdiction.
36. Many of the countries, including Germany the location of Petitioner’s Foreign Parent, in which Petitioner sells services have entered into tax treaties with the United States which provide that United States incorporated companies are exempt from foreign tax under certain circumstances.
37. Section 303(f) of the IITA expressly states that a taxpayer is taxable in another state if “that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.” 35 ILCS 5/303(f)(2).
38. Petitioner contends that the service sales at issue cannot be excluded from its sales factor denominator as the sales at issue were properly included in the denominator pursuant to the provisions of 35 ILCS 5/304 and Petitioner is taxable in another state pursuant to the provisions of 35 ILCS 5/303(f) and the tax treaties at issue.

¹ Petitioner did not include any of the sales of services at issue in its Illinois sales factor numerator for the years at issue as such services were not received in Illinois.

39. Based on the facts and statutory support provided above, Petitioner requests that the service sales at issue remain in Petitioner's sales factor denominator and the Department's assessment from this issue be withdrawn.

ERROR II - 86 ILL. ADMIN. CODE SECTION 100.3200(a)(2)(C) AS AMENDED IN 2010 IS INVALID AS CONTRARY TO AND AN IMPROPER NARROWING OF 35 ILCS 5/303(f) AND AS APPLIED TO PETITIONER WHO HAS SERVICE SALES INTO COUNTRIES WITH TAX TREATIES

40. Petitioner re-alleges and reincorporates paragraphs 1-30 of the Petition herein.
41. As indicated in the facts above, Petitioner has sales of services to customers located in foreign countries in addition to sales to customers located throughout the United States and files state income tax returns in Illinois and other states as required by the laws of each State.
42. Many of the countries that Petitioner sells items into have tax treaties that provide that United States companies are exempt from foreign tax under certain circumstances.
43. In August 2010, the Department amended Regulation Section 100.3200(a)(2)(C) to include the following provisions:
- “In the case of any foreign country or political subdivision of a foreign country, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax will be determined as if the foreign country or political subdivision were a state of the United States or a political subdivision of a U.S. state. A person who is not required to pay net income tax by a foreign country or political subdivision as the result of a treaty provision exempting certain persons, business activities or sources of income from tax is not subject to net income tax in that jurisdiction.”
44. The Illinois Register explains the aforementioned 2010 change as follows:
- “updates the guidance on when a taxpayer is ‘taxable in another state’ for purposes of allocation and apportionment of income in order to properly incorporate the decision in Dover Corp. v. Dept. of Revenue, 271 Ill.App.3d 700 (1995).”

45. The Illinois Register shows the following 2010 changes (additions in capital letters):

C) In the case of any foreign country or political subdivision OF A FOREIGN COUNTRY thereof, the determination of whether such state has jurisdiction to subject the taxpayer to a net income tax will be determined as if the foreign country or political subdivision were a state of the United States or a political subdivision OF A U.S. STATE thereof. A PERSON WHO IS NOT REQUIRED TO PAY NET INCOME TAX BY A FOREIGN COUNTRY OR POLITICAL SUBDIVISION AS THE RESULT OF A TREATY PROVISION EXEMPTING CERTAIN PERSONS, BUSINESS ACTIVITIES OR SOURCES OF INCOME FROM TAX IS NOT SUBJECT TO NET INCOME TAX IN THAT JURISDICTION.

46. The Illinois Supreme Court has determined that an administrative rule may not broaden or narrow the scope of the statute's scope of taxation and administrative rules that are inconsistent with the statute under which they are adopted will be held invalid. Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130 (November 21, 2013) citing Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 320(1943) and Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351, 366 (2009).

47. As noted above, Section 303(f) of the IITA expressly states:

For purposes of allocation of income pursuant to this Section, a taxpayer is taxable in another state if that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not. 35 ILCS 5/303(f)

48. Thus, IITA Section 303 clearly states that taxability is based on whether a state has jurisdiction not whether it exercises that jurisdiction. Based on the information provided above, the revisions to Regulation Section

100.3200(a)(2)(C) impermissibly narrows the language of the underlying Statute by requiring that a person pay tax in a particular jurisdiction even if a treaty exempts that taxation.

49. Petitioner thereby contends that based on the aforementioned narrowing of the scope of Regulation Section 100.3200(a)(2)(C), the sales of services at issue remain in Petitioner's sales factor denominator and the Department's assessment from this issue be withdrawn pursuant to the sales factor provisions of the IITA.

ERROR III – 86 ILL. ADMIN. CODE SECTION 100.3200(a)(2)(C) AS AMENDED IN 2010 IS INVALID AS IT VIOLATES THE FOREIGN COMMERCE CLAUSE

50. Petitioner realleges and reincorporates paragraphs 1-30 of the Petition herein.
51. The Commerce Clause of the United States Constitution provides that:
“Congress shall have Power...to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” Art I, Section 8, cl 3.
52. The United States Supreme Court has established a four-part test to analyze a tax impacting interstate commerce. Complete Auto Transit v. Brady, 430 U.S. 274 (1977). The second prong of that test finds that a tax may not discriminate against interstate commerce.
53. The United States Supreme Court has held that a tax impacting foreign commerce must also meet the four-part test. Therefore, a State may not discriminate against foreign commerce. Japan Lines, Ltd, v. County of Los Angeles, 441 U.S. 434 (1979).
54. As noted above, Illinois amended Regulation Section 100.3200(a)(2)(C) regarding sales in foreign commerce. This amendment unilaterally determined that:
“A person who is not required to pay net income tax by a foreign country or political subdivision as the result of a treaty provision exempting certain persons, business activities or sources of income from tax is not subject to net income tax in that jurisdiction.”

55. This Regulation Section 100.3200(a) has the effect of treating foreign sales less favorably than domestic sales. A sale to a foreign country who does not impose a net income tax by virtue of a treaty is treated differently than a sale to a state who does not impose a net income tax. This differing treatment of Petitioner's foreign sales is a direct violation of the Commerce Clause.
56. Petitioner thereby contends that based on the aforementioned Commerce Clause violation resulting from the Department's application of Regulation Section 100.3200(a)(2)(C), the service sales at issue remain in Petitioner's sales factor denominator and the Department's assessment from this issue be withdrawn.

ERROR IV – INCLUDING THE INCOME FROM THE TRANSACTIONS AT ISSUE IN THE PETITIONER'S TAXABLE INCOME WHILE EXCLUDING THE SALES IN THE SALES FACTOR DENOMINATOR FAILS THE EXTERNAL CONSISTENCY TEST AND DOES NOT ALLOW THE REPRESENTATION OF THE TRANSACTIONS IN THE SALES FACTOR

57. Petitioner realleges and reincorporates paragraphs 1-30 of the Petition herein.
58. It is a widely accepted principle that income to be included in the tax base is also included in the sales factor apportionment. The purpose is to provide equitable taxation in those states where the taxpayer derives the economic benefits of its presence. *Goldberg v. Sweet*, 488 U.S. 252 (1989). Allowing for taxation of the income without representation in the factor does not follow basic equity or fairness.
59. The Department has not proposed a change to the Petitioner's base income to remove the income generated from the sale of services at issue. Moreover, receipts from the transactions at issue were properly included in the sales factor pursuant to Illinois statutory provisions. The only changes before us are reductions to the Petitioner's sales factor denominator.

60. The service sales at issue were not received in the State of Illinois. The exclusion of the sales from the sales factor would cause income to be allocated to Illinois that is already being justly allocated to other jurisdictions.
61. Based on the Petitioner's facts presented above and the express language of the IITA as supported by the Goldberg v. Sweet Opinion, the Petitioner properly sourced the sales of services at issue and the proposed tax assessment should be withdrawn.

ERROR V - AS A COMPLETELY INDEPENDENT BASIS FOR OBJECTING TO THE NOTICES AT ISSUE BEYOND WHAT IS MENTIONED IN ERRORS I THRU IV ABOVE, PETITIONER SUBMITS THAT THE DUE PROCESS, EQUAL PROTECTION AND UNIFORMITY PROVISIONS OF THE UNITED STATES CONSTITUTION AND ILLINOIS CONSTITUTION PROHIBIT THE DEPARTMENT FROM EXCLUDING THE SALES OF SERVICES AT ISSUE FROM PETITIONER'S SALES FACTOR

62. Petitioner realleges and reincorporates paragraphs 1-30 of the Petition herein.
63. Petitioner contends that the exclusion of the sales at issue from its sales factor is unconstitutional pursuant to the due process, equal protection and uniformity clause provisions.
64. The United States Supreme Court explained in Mead that:

“The Commerce Clause and the Due Process Clause impose distinct but parallel limitations on a State's power to tax out-of-state activities. Mead citing Quill Corp. v. North Dakota, 504 U. S. 298, 305-306 (1992); Mobil Oil Corp., 445 U. S., at Miller Brothers Co. v. Maryland 451, n. 4 (STEVENS, J., dissenting); Norfolk & Western R. Co. v. Missouri Tax Comm'n, 390 U. S. 317, 325, n. 5 (1968). The Due Process Clause demands that there exist “`some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax,” as well as a rational relationship between the tax and the “`“values connected with the taxing State.”” Quill Corp., supra, at 306 (quoting, 347 U. S. 340, 344-345 (1954), and Moorman Mfg. Co. v. Bair, 437 U. S. 267, 273 (1978)). The Commerce Clause forbids the States to levy taxes that discriminate against interstate commerce or that burden it by subjecting activities to multiple or unfairly apportioned taxation. See Container Corp., 463 U. S., at 170-171; Armco Inc. v. Hardesty, 467 U. S. 638, 644 (1984). The “broad inquiry” subsumed in both constitutional requirements is “`whether the taxing power

exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state'”—that is, “ `whether the state has given anything for which it can ask return.' ” ASARCO Inc. v. Idaho Tax Comm'n, 458 U. S. 307, 315 (1982) (quoting Wisconsin v. J. C. Penney Co., 311 U. S. 435, 444 (1940)).

65. Accordingly, Petitioner contends that denying its factor representation of the sales at issue from the properties is unconstitutional.
66. Based on the Petitioner’s facts presented above and the express language of the IITA, the Petitioner properly sourced the sales at issue and the proposed tax assessments should be withdrawn in total.

ERROR VI – THE ILLINOIS SALES FACTOR NUMERATOR SHOULD NOT BE ADJUSTED TO INCLUDE PETITIONER’S OTHER INCOME SALES PURSUANT TO 35 ILCS 5/304(a)(3)(C-5) AS THE MAJORITY OF INCOME-PRODUCING ACTIVITIES FOR SUCH TRANSACTIONS WERE PERFORMED OUTSIDE OF ILLINOIS

67. Petitioner re-alleges and reincorporates paragraphs 1-30 of the Petition herein.
68. As indicated in the facts above, Petitioner reports “other income” items from activities conducted in Illinois, other states and foreign countries.
69. Petitioner’s 2013 and 2014 Illinois income tax returns at issue correctly included Petitioner’s sales from the “other income” items in Petitioner’s sales factor numerator if the majority of the underlying income producing activity for that item was performed in Illinois pursuant to 35 ILCS 5/304(a)(3)(C-5).
70. Petitioner’s 2013 and 2014 Illinois income tax returns at issue did not include Petitioner’s sales from the “other income” items in Petitioner’s sales factor numerator if the majority of the underlying income producing activity for that item was performed in a State other than Illinois pursuant to 35 ILCS 5/304(a).
71. The Department incorrectly adjusted Petitioner’s sales factor, citing 35 ILCS 5/304(a)(3)(C) and 86 IL Adm. Code 100.3370(c)(3), to include in Petitioner’s sales factor numerator receipts (other than receipts from sales of tangible personal property) for which the Department contends the majority of Petitioner’s income-producing activities were performed in Illinois.

72. Article 3 of the IITA requires the apportionment of business income between Illinois and other States based on the Taxpayer’s business activities in each state. Moreover, Section 304(a)(3)(C-5)(iii) of the IITA expressly provides that the receipts from intangibles are located in Illinois if “the income-producing activity is performed both within and without this State and a greater proportion of the income-producing activity is performed within this State than without this State, based on performance costs.”
73. Illinois Regulation Section 100.3370 provides the following guidance and definitions concerning the terms “income producing activity” and “costs of performance”:
- 86ILAC100.3370(c)(3)(A) Income producing activity defined.
- The term “income producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the person in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a person, such as those conducted on its behalf by an independent contractor. The mere holding of intangible personal property is not, of itself, an income producing activity.
74. More specifically, Regulation Section 100.3370(c)(3)(D)(iii) describes a situation very much on point to this matter where certain personal services not directly connected with the performance of the revenue service at issue are not includable in the cost of performance computation:
- ... Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations. ...
75. Based on these definitions, “income producing activity” applies to each separate item of income and consists of those activities “directly engaged in” by a person in the regular course of its trade or business.

76. Based on the information provided above, less than 50% of Petitioner's cost from the other income transactions are attributable to Illinois and the receipts from such transactions were correctly reported in Petitioner's sales factor denominator and should not be reported in Petitioner's sales factor numerator pursuant to the provisions of IITA Section 304 and Illinois Regulation Section 100.3370.
77. Accordingly, Petitioner requests that the "other income" sales at issue remain in Petitioner's sales factor denominator, not be included in Petitioner's sales factor numerator and that the Department's assessment from this issue be withdrawn.

ERROR VII - ABATEMENT OF PENALTIES AND INTEREST PURSUANT TO REASONABLE CAUSE PROVISIONS OF REGULATION SECTION 700.400

78. Petitioner realleges and reincorporates paragraphs 1- 30 of the Petition herein.
79. For the period ending December 2013, Petitioner requests the abatement under the reasonable cause provisions of Regulation 700.400 of \$13,306.94 of UPIA-5 late payment penalties and \$8,951.98 in interest.
80. For the period ending December 2014, Petitioner requests the abatement under the reasonable cause provisions of Regulation Section 700.400 of \$43,336.69 of UPIA-5 late penalty payment penalties and \$20,726.83 of interest.
81. Petitioner contends that in completing its 2013 and 2014 Illinois income tax returns it made a good faith effort to comply with the law and exercised ordinary business care and prudence as it followed Illinois statutory and regulatory provisions by including all of its sales receipts, including sales to its foreign parent, in its Illinois sales factor pursuant to Illinois statutes and regulations.
82. Petitioner further contends that it was reasonable to source "other income" items outside of Illinois pursuant to the provisions of Illinois statutes and regulations.
83. With respect to the other tax assessments reported in the Notices, Petitioner avers that the penalties originating from those items should also be abated as the Petitioner made a good faith effort to comply with the law and exercised ordinary business care in preparation of the 2013 and 2014 Illinois income tax returns.

84. Finally, the Department's Regulations on Reasonable Cause look to whether the Petitioner "made a good faith effort" and exercised "ordinary business care and prudence". 86 Illinois Admin. Code Section 700.400. (35 ILCS 735-3/8.) As indicated above, Petitioner made every effort to comply with the Illinois income tax statutes and regulations and correctly determined that the Illinois taxable income and that its 2013 and 2014 income tax returns were prepared correctly as originally filed. The information provided above supports the abatement of all penalties and interest assessed on the Notices under the reasonable cause provisions.

CONCLUSION AND RELIEF REQUESTED

WHEREAS, Petitioner requests that the Department withdraw the Notices at issue for 2013 and 2014. We respectfully request that the Tax Tribunal Rule in favor of Petitioner.

Respectfully Submitted,

T-Systems North America, Inc.

By: 
One of the Petitioner's Attorneys

David J. Kupiec
Kupiec & Martin, LLC
600 W. Van Buren #202
Chicago, IL 60607
(312) 632-1022
dkupiec@kupiecandmartin.com
Attorney
No. 58817

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



#BWNKMGV
#CNXX X21X 69X5 5521#
T-SYSTEMS NORTH AMERICA INC
1901 BUTTERFIELD RD STE 700
DOWNS GROVE IL 60515-5403

April 11, 2018



Letter ID: CNXXX21X69X55521

Taxpayer ID: 13-3571176
Audit ID: A1175916544
Reporting period: December 2013
Total Deficiency: \$90,194.92
Balance due: \$90,194.92

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) 557-0775

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



#BWNKMGV
#CNXX X126 6561 7124#
T-SYSTEMS NORTH AMERICA INC
1901 BUTTERFIELD RD STE 700
DOWNERS GROVE IL 60515-5403

April 11, 2018



Letter ID: CNXX12665617124

Taxpayer ID: 13-3571176
Audit ID: A1175916544
Reporting period: December 2014
Total Deficiency: \$229,363.27
Balance due: \$229,533.65

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) 557-0775

IN THE INDEPENDENT TAX TRIBUNAL

<u>T-Systems North America Inc.</u>)	Doc.
Petitioner)	
Vs.)	
<u>THE ILLINOIS DEPARTMENT OF</u>)	
<u>REVENUE</u>)	
Respondent)	

NOTICE OF FILING

TO:

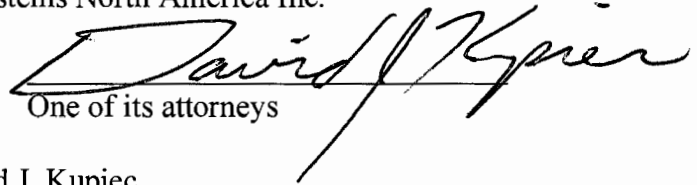
Illinois Department of Revenue
100 W. Randolph St.
SUITE 7-900
Chicago, IL 60601

Please take note that on June 6, 2018, the undersigned representative for T-Systems North America Inc., filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle St. Room 506, Chicago, IL 60601 a Petition, a copy of which is attached and served on you.

Date: June 6, 2018

Respectfully Submitted,
T-Systems North America Inc.

By:

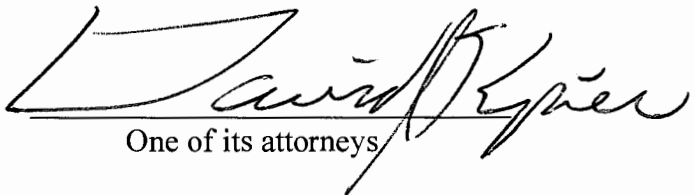

One of its attorneys

David J. Kupiec
Kupiec & Martin, LLC
600 West Van Buren Street, Ste 202
Chicago, Illinois 60607

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered in person before the hour of 5:00p.m. on the 6th day of June, 2018.

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601

By: 
One of its attorneys

David J. Kupiec
Kupiec & Martin, LLC
600 West Van Buren Street, Ste 202
Chicago, Illinois 60607