

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

PEPPERIDGE FARM INCORPORATED,)	
)	
Petitioner,)	Case No. 15-TT-071
)	
v.)	
)	Chief Judge James Conway
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

ANSWER

NOW COMES the Illinois Department of Revenue (“Department”), through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to the Pepperidge Farm Incorporated (“Petitioner”) Petition respectfully pleads as follows:

PARTIES

1. For the tax years ending July 31, 2009 and July 31, 2010 (“Years in Issue”), Petitioner was a Connecticut corporation whose principal business address was 595 Westport Ave., Norwalk, CT, 06851.

ANSWER: The years at issue, referred to as “Years in Issue” is required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a)(1)(E) (86 Ill. Adm. Code §5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Petitioner’s name and address is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

2. Petitioner is represented by Fred O. Marcus, David A. Hughes and Christopher T. Lutz of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3210 or fmarcus@hmblaw.com; 312-606-3212 or dhughes@hmblaw.com; and 312-606-3222 or clutz@hmblaw.com, respectively.

ANSWER: The information contained in Paragraph 2 is required by Rule 310(a)(1)(B) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

3. Petitioner's FEIN is 06-0613103.

ANSWER: The information contained in Paragraph 3 is required by Rule 310(a)(1)(C) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

4. Petitioner is an indirect, wholly-owned subsidiary of Campbell Soup Company.

ANSWER: Department admits the factual allegation contained in Paragraph 4.

5. Petitioner is the designated agent for a unitary group of affiliates that files Illinois corporate income and replacement tax returns on a combined basis.

ANSWER: Department admits the factual allegations contained in Paragraph 5.

6. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

ANSWER: Department admits that Department is an agency of the Executive Branch of the Illinois State Government and is tasked with enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.).

NOTICES

7. On February 11, 2015, the Department issued two Notices of Deficiency (“Notices”) for tax, penalties, and interest totaling \$3,228,546.86 for the Years in Issue. True and accurate copies of the Notices are attached hereto as Exhibits A and B, respectively. Unless otherwise stated, the following paragraphs relate to the Years in Issue.

ANSWER: A copy of the Statutory Notice is required to be attached to the Taxpayer’s petition pursuant to Rule 310(a)(1)(D) and is not a material allegation of fact and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, Department admits the Department issued Notices of Deficiency for the tax years ending July 31, 2009 and July 31, 2010 in the amounts of \$1,242,600.06 and \$1,985,946.80, respectively.

JURISDICTION

8. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100 and the Illinois Income Tax Act (“Income Tax Act”), 35 ILCS 5/101 et. seq.

ANSWER: Department admits the statements contained in Paragraph 8.

9. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notices.

ANSWER: Paragraph 9 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force, and effect at all relevant times of the statutes set forth or referred to in Paragraph 9.

BACKGROUND

10. Petitioner and its unitary affiliates timely filed combined Illinois corporate income and replacement tax returns for the Years in Issue.

ANSWER: Department admits Department received Form IL-1120 for Petitioner and its unitary affiliates for the tax years 2009 and 2010.

11. One of Petitioner's unitary affiliates that was included in the combined income tax returns for the Years in Issue was Campbell Sales Company ("Sales").

ANSWER: Department admits the factual allegations contained in Paragraph 11.

12. Sales is the selling corporation for Campbell Soup Company's lines of consumer soup, sauce, and beverage products in the United States.

ANSWER: Department admits the factual allegations contained in Paragraph 12.

13. Sales is incorporated under the laws of New Jersey and maintains its principal place of business in Camden, New Jersey.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 13 and demands strict proof thereof.

14. On its returns for the Years in Issue, Petitioner excluded Sales' Illinois gross receipts from the numerator of its combined sales factor because Sales was not subject to Illinois income tax in accordance with P.L. 86-272 (15 U.S.C. Sec. 381 et seq.).

ANSWER: Department admits that Petitioner excluded Sales' Illinois gross receipts from the numerator of its combined sales factor. Petitioner's statement that Sales was not subject to Illinois income tax in accordance with P.L. 86-272 (15 U.S.C. Sec. 381 et seq.) is a legal conclusion and therefore does not require a response pursuant to Rule 301(b)(2). Notwithstanding the above, Department denies that Sales was not subject to Illinois income tax.

15. The Department audited Petitioner for the Years in Issue and issued the Notices on February 11, 2015.

ANSWER: Department admits the factual allegations contained in Paragraph 15.

16. The Department determined that Sales is subject to Illinois' taxing jurisdiction and therefore included Sales' Illinois gross receipts in the numerator of Petitioner's combined Illinois sales factor, thereby resulting in the tax deficiency in issue.

ANSWER: Department admits the factual allegations contained in Paragraph 16.

COUNT I

17. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 16, inclusive, hereinabove.

ANSWER: Department incorporates and repeats its answers to Paragraphs 1 through 16 as if fully set forth herein.

18. P.L. 86-272 provides that an out-of-state seller of tangible personal property is not subject to a state's net income tax if the seller's only connection with the state is the solicitation of orders, which are sent outside the state for acceptance or rejection and, if accepted, are filled by shipment or delivery from a point outside the state.

ANSWER: Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force, and effect of P.L. 86-272 referred to in Paragraph 19 and states that such law speaks for itself.

19. Sales purchases product from an affiliate at an arm's length price and then resells the product to third party retailers and wholesalers throughout the country, including Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 19 and demands strict proof thereof.

20. Sales does not maintain an office, warehouse, storage facility, sample room or any other place of business in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 20 and demands strict proof thereof.

21. Sales does not own, maintain, or lease any real, tangible, or personal property located in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 21 and demands strict proof thereof.

22. Sales employees carry inventory samples, supplies and other equipment in Illinois which they use in their solicitation activities.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 22 and demands strict proof thereof.

23. Sales employees do not resolve or investigate customer complaints in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 23 and demands strict proof thereof.

24. Sales employees send all complaints and disputes to Sales' home office in New Jersey.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 24 and demands strict proof thereof.

25. Sales employees do not replace damaged items in customers' displays or inventory in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 25 and demands strict proof thereof.

26. Sales employees do not receive purchase orders from customers in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 26 and demands strict proof thereof.

27. Purchase orders are sent outside Illinois for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 27 and demands strict proof thereof.

28. Sales employees do not accept returned merchandise in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 28 and demands strict proof thereof.

29. Sales employees do not make repairs or provide maintenance service to the goods sold in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 29 and demands strict proof thereof.

30. Sales employees do not collect current or delinquent accounts in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 30 and demands strict proof thereof.

31. Sales employees do not investigate customers' credit worthiness in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 31 and demands strict proof thereof.

32. Sales employees do not repossess property in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 32 and demands strict proof thereof.

33. Sales employees do not secure deposits on sales in Illinois.

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 33 and demands strict proof thereof.

34. Sales' presence in Illinois during the Years in Issue was limited to employees who worked out of their Illinois homes and whose activity was limited to the solicitation of orders of tangible personal property and activities ancillary to solicitation under P.L. 86-272 and the ruling in *Wisconsin Department of Revenue v. Wrigley*, 505 U.S. 214 (1992).

ANSWER: Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 34 and demands strict proof thereof.

35. Sales is exempt from Illinois net income tax under P.L. 86-272 and its Illinois receipts therefore may not be included in the numerator of Petitioner's combined Illinois sales factor.

ANSWER: Paragraph 35 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

36. The Department's modification to Petitioner's Illinois sales factor and resulting Illinois apportioned income were in error.

ANSWER: Paragraph 36 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies the allegation in Paragraph 36.

COUNT II

37. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 36, inclusive, hereinabove.

ANSWER: Department incorporates and repeats its answers to Paragraphs 1 through 36, as if fully set forth herein.

38. For the Years in Issue, the Department assessed penalties in an amount totaling \$488,418.00.

ANSWER: Department admits that for the tax years ending 2009 and 2010, it assessed penalties in the amounts of \$184,508.20 and \$303,909.80, respectively.

39. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 39 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, Department admits the existence, force, and effect of 35 ILCS 735/3-8 referred to in Paragraph 39 and states that such law speaks for itself.

40. 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 its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code §700.400(b).

ANSWER: Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, Department admits the existence, force, and effect of 86 Ill. Admin. Code §700.400(b) referred to in Paragraph 40 and states that such law speaks for itself.

41. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code §700.400(b).

ANSWER: Paragraph 41 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, Department admits the existence, force, and effect of 86 Ill. Admin. Code §700.400(b) referred to in Paragraph 41 and states that such law speaks for itself.

42. Petitioner, relying on P.L. 86-272, the ruling in *Wisconsin Department of Revenue v. Wrigley*, 505 U.S. 214 (1992), and Department regulations reasonably concluded that Sales was exempt from Illinois income tax and that its Illinois receipts should therefore be excluded from Petitioner's combined Illinois sales factor.

ANSWER: Paragraph 42 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

43. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

ANSWER: Paragraph 43 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies the allegation in Paragraph 43.

WHEREFORE, Department prays that the Tribunal enter an order to:

- a. deny any prayer for relief in the Petitioner's Petition;
- b. find the Notices of Deficiency at issue correct as issued;
- c. order judgment in favor of Department and against Petitioner; and
- d. grant such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: /s/ Ronald Forman
Ronald Forman
Special Assistant Attorney General

By: /s/ Rebecca L. Kulekowskis
Rebecca L. Kulekowskis
Special Assistant Attorney General

By: /s/ Jonathan M. Pope
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ILLINOIS INDEPENDENT TAX TRIBUNAL

PEPPERIDGE FARM INCORPORATED,)	
)	
v.)	15-IT-071
)	
ILLINOIS DEPARTMENT OF REVENUE.)	
)	

AFFIDAVIT OF SANJAY C. SONI
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

STATE OF NEW JERSEY
COUNTY OF BERGEN

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Sanjay C. Soni, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. I reviewed Taxpayer's Illinois Corporate Income and Replacement Tax Returns for the tax years ending July 31, 2009 and July 31, 2010.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in Taxpayer's Pétition paragraphs 13, and 19 through 34.
5. I am an adult resident of the State of New Jersey and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Sanjay C. Soni
Revenue Auditor III
Illinois Department of Revenue

Date: 7/2/15



STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

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v.)	Case No. 15-TT-071
)	
THE ILLINOIS DEPARTMENT)	Chief Judge James M. Conway
OF REVENUE,)	
Respondent.)	

NOTICE OF FILING

TO: Mr. Fred O. Marcus
Mr. David A. Hughes
Horwood Marcus & Berk Chartered
500 W. Madison, Suite 3700
Chicago, Illinois 60601
(312) 606-3200

PLEASE TAKE NOTICE that on July 2, 2015, Respondent filed by e-mail, with the Illinois Independent Tax Tribunal, located at 160 N. LaSalle Street Room N506, Chicago, Illinois 60601, the Department's **ANSWER** in the above captioned matter.

/s/ Jonathan M. Pope
Jonathan M. Pope
Special Assistant Attorney General

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Dated: July 2, 2015

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CERTIFICATE OF SERVICE

Jonathan M. Pope certifies that he is a Special Assistant Attorney General of the State of Illinois duly appointed by Lisa Madigan, Attorney General of the State of Illinois; that he is authorized to make this certificate; that on July 2, 2015, before the hour of 5:00 p.m. (C.S.T.) he served a true and exact copy of the foregoing instrument entitled **ANSWER** on the above Petitioner by sending the same as an attachment to an e-mail message addressed to Petitioner at its designated e-mail address:

Fred O. Marcus: fmarcus@hmbllaw.com
David A. Hughes: dhughes@hmbllaw.com

/s/ Jonathan M. Pope
Jonathan M. Pope
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