

**ILLINOIS INDEPENDENT TAX TRIBUNAL**

---

<b>TARGET NATIONAL BANK</b>	)	
now known as	)	
<b>TARGET ENTERPRISE, INC.</b>	)	
	)	Case No. 18-TT-87
Petitioner,	)	
	)	
v.	)	
	)	Chief Judge James M. Conway
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
Respondent.	)	
	)	

---

**ANSWER**

NOW COMES the Illinois Department of Revenue (the “Department”), through its attorney, Kwame Raoul, Illinois Attorney General, and for its Answer to the Petition of Target Enterprise, Inc., as successor in interest to Target National Bank (“Petitioner” or “Taxpayer”), respectfully pleads as follows:

**PARTIES**

1. For the tax years ending January 31, 2012 and January 31, 2013 ("Years in Issue"), TNB was a federal savings bank whose principal business address was 3901 West 53<sup>rd</sup> Street, Sioux Falls, SD 57106.

**ANSWER:** The Department admits the factual allegations in Paragraph 1.

2. Subsequent to the Years in Issue, Target National Bank was merged with and into Target Corporate Services, Inc. which was subsequently merged with and into Target Enterprise, Inc.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 2 and demands strict proof thereof.

3. Petitioner is represented by Fred O. Marcus and Christopher T. Lutz of Horwood Marcus & Berk Chartered, 500 West Madison Street, Suite 3700, Chicago, Illinois 60661. Mr. Marcus can be reached by phone at 312-606-3210 or by e-mail at [fmarcus@hmblaw.com](mailto:fmarcus@hmblaw.com). Mr. Lutz can be reached by phone at 312-606-3237 or by e-mail at [clutz@hmblaw.com](mailto:clutz@hmblaw.com).

**ANSWER:** The Department admits the factual allegations in Paragraph 3.

4. TNB's FEIN was 41-1721813.

**ANSWER:** The Department admits the factual allegation in Paragraph 4.

5. During the Years in Issue, TNB was a wholly owned subsidiary of Target Corporation ("Target"), a retail company headquartered in Minneapolis, Minnesota.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 5 and demands strict proof thereof.

6. TNB was a member of, and the designated agent for, a unitary group of corporations that filed Illinois corporate income and replacement tax returns on a combined basis as financial institutions.

**ANSWER:** The Department admits the factual allegations in Paragraph 6.

7. 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:** The Department admits that it 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.*, which is relevant to the legal claims raised in Taxpayer's Petition.

### **NOTICES**

8. On June 5, 2018, the Department issued its Notices of Deficiency ("Notice") seeking \$16,204,828 consisting of additional taxes of \$11,895,919, interest through June 5, 2018 of

\$1,929,725 and penalties of \$2,379,184 for the Years in Issue. True and accurate copies of the Notice are attached hereto and marked Exhibit A. Unless otherwise stated to the contrary, the following paragraphs relate to the Years in Issue.

**ANSWER:** The Department admits the factual allegations in Paragraph 8 and states that the Notices of Deficiency speak for themselves.

### **JURISDICTION**

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

**ANSWER:** The Department admits the existence, force and effect of the Illinois Independent Tax Tribunal Act 35 ILCS 1010/1-1 et seq. and the Illinois Income Tax Act 35 ILCS 5/101 et. seq. and states that the statutes speak for themselves.

10. This Tribunal has jurisdiction over this matter pursuant to Sections 1-15, 1-45 and 1-50 of the Tribunal Act and IITA Section 909(e) because Petitioner timely filed this Petition within sixty (60) days of the Department's Notice.

**ANSWER:** Petitioner's assertion that it timely filed a petition is a legal conclusion, 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, the Department admits the existence, force and effect of the Independent Tax Tribunal Act 35 ILCS 1010/1-1 et seq. and states that the statute speaks for itself.

### **CONTROVERSY**

11. During the Years in Issue, TCC Corporation Sarl, a limited liability company organized under the laws of Luxembourg ("TCC-Sarl"), is deemed to have made dividend payments to Target Capital Corporation ("TCC"), a member of TNB's unitary business group,

which were includible in TCC's Federal taxable income as Subpart F income pursuant to Sections 951 through 954 of the Internal Revenue Code of 1986, as amended ("IRC").

**ANSWER:** The Department denies the factual allegations in Paragraph 11.

12. Dividends deemed paid pursuant to IRC Sections 951 through 954, which are includible in Federal taxable income, are excludible from Illinois base income pursuant to the subtraction modification found at IITA Section 203(b)(2)(O).

**ANSWER:** Paragraph 12 contains a legal conclusion, 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, the Department admits the existence, force, and effect of IITA Section 203(b)(2)(O) and states that the statute speaks for itself.

13. The Department believes that TCC-Sarl fails the 80/20 test found at IITA Section 1501(a)(27) and that, as a result, the IITA Section 203(b)(2)(O) foreign dividend subtraction modification is unavailable.

**ANSWER:** Paragraph 13 contains a legal conclusion, 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, the Department admits the existence, force and effect of the statute cited in Paragraph 13 and states that such statute speaks for itself.

14. Because TCC-Sarl filed a Federal Form 1120-F on which it reported no Federal taxable income, the Department further believes that the allowance of an IITA Section 203(b)(2)(O) foreign dividend subtraction modification results in a prohibited IITA Section 203(g) "double deduction", once as a foreign dividend and once as Federal taxable income which should have been, but was not, reported on its Federal Form 1120-F.

**ANSWER:** Paragraph 14 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

15. In its Notice, the Department adjusted TCC's income to include the dividends deemed paid by TCC-Sarl in TCC's Illinois base income, essentially reversing the IITA 203(b)(2)(O) foreign dividend subtraction modification taken by TCC on its original returns.

**ANSWER:** Paragraph 15 contains a legal conclusion, 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, the Department states that the Notices of Deficiency speak for themselves.

16. In its Notice, the Department stated that it adjusted Petitioner's subtraction modification for foreign dividends to reflect the correct amount as allowed by Illinois law. In furtherance of this explanation, the Department provided citations to 35 ILCS 5/203(b)(2)(G), (b)(2)(O), (h).

**ANSWER:** The Department admits the existence, force and effect of the statute cited in Paragraph 16 and states that such statute speaks for itself. The Department states that the Notices of Deficiency speak for themselves.

17. In essence, the Department's position is that TCC-Sarl is not an "80/20" company under the definition provided in 35 ILCS 5/1501(a)(27). 80/20 companies are companies that would be members of the Illinois unitary business group except that 80% or more of the member's total business activity occurs outside of the United States. 35 ILCS 5/1501(a)(27).

**ANSWER:** The Department admits the existence, force and effect of the statute cited in Paragraph 17 and states that such statute speaks for itself.

18. Because the Department believes TCC-Sarl is not an 80/20 company, it has taken the position that the subtraction modification in 35 ILCS 5/203(b)(2)(O) is unavailable. The

Department also explained in a letter to Petitioner that if "TCC-Sarl is a domestic entity (not an 80/20), the dividends are not foreign dividends and can't be taken as a foreign dividend subtraction modification. This would be a double deduction per the Illinois income tax act."

**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). The Department lacks sufficient knowledge to either admit or deny the remaining factual allegations in Paragraph 18 and demands strict proof thereof.

19. Finally, the Department concluded, contrary to the provisions of IRC Section 881, that TCC-Sarl's receipts should be included in Petitioner's Illinois apportionment factor, because TCC-Sarl "ha[d] nexus through the company's agents, Target National Bank and Target Corp. and TCC-Sarl[.]"

**ANSWER:** Paragraph 19 contains a legal conclusion, 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, the Department admits TCC-Sarl's receipts should be included in Petitioner's Illinois apportionment factor and TCC-Sarl had Illinois nexus. The Department denies the remaining factual allegations in Paragraph 19.

## **FACTS**

### **A. Target Corporation's Activities**

20. Target is the parent corporation of a group of operating companies that conduct a retail business.

**ANSWER:** The phrase "group of operating companies" is vague and ambiguous as the entities are not identified. Therefore, the Department denies the factual allegations in Paragraph 20.

21. Target operates in two reportable segments: Retail and Credit Card.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 21 and demands strict proof thereof.

22. Target's Credit Card segment offers credit to qualified Target customers through TNB by issuing branded credit cards; the Target VISA Card and the Target RED Card (the Target VISA Card and the Target RED Card are hereinafter referred to collectively as the "Target Cards" and the issuance of the Target Cards by TNB is hereinafter referred to as the "Target Card Program").

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 22 and demands strict proof thereof.

23. Target was the sole shareholder of TNB. TNB was formed in 1995 to allow Target to conduct certain financial service activities with its customers, such as lending activities pursuant to its Target Card Program, and to facilitate the growth of its retail business segment.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 23 and demands strict proof thereof.

24. Target was also the sole shareholder of TCC. TCC, in turn, was the sole shareholder of Target Receivables Corporation ("TRC"), a Minnesota corporation.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 24 and demands strict proof thereof.

25. TRC, in turn, formed Target Credit Card Master Trust ("Master Trust") and the Target Credit Card Owner Trust 2008-1 ("Owner Trust"). Both the Master Trust and the Owner Trust are treated as disregarded entities for Federal income tax purposes.

**ANSWER:** Paragraph 25 contains a legal conclusion, 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, the Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 25 and demands strict proof thereof.

26. TRC ceased to exist prior to the Years in Issue.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 26 and demands strict proof thereof.

**B. TNB's Activities**

27. TNB, a nationally chartered bank, was authorized to engage in consumer credit card operations, accept savings and time deposits of \$100,000 or more, engage in loan collection and servicing activities and provide payment and information processing services.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 27 and demands strict proof thereof.

28. TNB's operations were located in Sioux Falls, South Dakota where its employees conducted activities such as generating monthly credit card statements, producing credit cards and mailing them to existing and new cardholders, and producing and mailing other types of correspondence and communications to cardholders.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 28 and demands strict proof thereof.

29. TNB also had a call center in Tempe, Arizona.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 29 and demands strict proof thereof.



30. TNB's primary focus was providing consumer credit to Target's customers via the Target Card Program through the issuance of Target Cards. As the issuer of Target Cards, and the owner of the customer accounts, TNB administered the Target Card Program by (i) marketing Target Cards to potential customers, (ii) performing credit analysis of applicants and (iii) engaging in loan origination activity such as acceptance decisions, loan processing and establishing the terms and conditions of the cardholder accounts. As the owner of its customers' accounts, TNB was responsible for managing ongoing relationships with its customers, including customer service and Target's customer loyalty program.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 30 and demands strict proof thereof.

31. TNB generated receivables from cardholders' use of their Target Cards ("Cardholder Receivables"). The Cardholder Receivables reflected the amount owed to TNB plus any assessed finance charges.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 31 and demands strict proof thereof.

32. TNB earned the majority of its income from marketing and servicing fees in connection with its generation of new credit card accounts and receivables. TNB also received fees from Target based on the principal balance of its receivables, incentive fees from VISA in

connection with the issuance of Target VISA Cards and certain incidental fees that it charged to Target VISA cardholders for various services.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 32 and demands strict proof thereof.

33. As the servicer of the Cardholder Receivables, TNB performed all collection activities associated with the Cardholder Receivables which included the processing of customer statements, maintenance of cardholder accounts, collection and processing of required payments, negotiation of slow-pay and uncollectable accounts and completion of any filings, reports, notices, applications and registrations that may have been applicable to the Master Trust's and Owner Trust's interests in the Cardholder Receivables.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 33 and demands strict proof thereof.

34. TNB also administered Target's consumer credit card program by engaging in activities such as assisting in the marketing of credit cards to Target's customers and performing credit analysis of credit card applicants based upon previously agreed to parameters.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 34 and demands strict proof thereof.

35. Because TNB owned the account relationship, it assumed responsibility to communicate with cardholders. Consistent with TNB's responsibility as servicer of the receivables, it was primarily responsible for all of the collection activities associated with the receivables. Collection activities included (i) processing of cardholder statements, (ii) maintenance of cardholder account records, (iii) collection and processing of required payments, and (iv) negotiation of slow-pay and uncollectable accounts.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 35 and demands strict proof thereof.

36. TNB employed third party collection agents to assist in collecting delinquent receivables. Settlement of delinquent receivables often involved establishing a payment plan with the obligor and may have involved the waiver of any applicable fees and penalties. TNB, in conjunction with Target, could also decide to write-off all or a portion of the principal balance of a receivable where it determined that the obligor was unable to repay the full principal balance of the receivable.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 36 and demands strict proof thereof.

### **C. The Securitization Program**

37. TCC and TRC were formed to provide TNB with a source of funding for the Target Card Program by legally isolating the receivables from Target in the event of bankruptcy.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 37 and demands strict proof thereof.

38. TCC and TRC were contractually obligated to purchase TNB's receivables. This obligation collateralized the third party debt that was issued by the Master Trust. The debt issued by the Master Trust was held by JP Morgan Chase. The Owner Trust borrowed funds from an affiliate of Chase Bank USA. The debt instrument between the Owner Trust and Chase was represented by Notes.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 38 and demands strict proof thereof.

39. Prior to 2010, the receivables originated by TNB were sold to TCC. TCC, in turn, then sold the receivables to TRC who then transferred the receivables to the Master Trust for the benefit of the Master Trust's certificate holders.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 39 and demands strict proof thereof.

40. TCC's and TRC's purchases of receivables were without recourse. The intent of the parties was that the conveyances would constitute an absolute sale. Consistent with the sale of receivables from TNB to TCC and from TCC to TRC, the transfer from TRC to the Master Trust was a transfer of all of TRC's right, title, and interest in the receivables.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 40 and demands strict proof thereof.

#### **D. TRC's Activities**

41. TRC's business activities were limited to the passive purchase of interests in receivables and the creation of the Master Trust and the Owner Trust. TNB generates a receivable each time a Target customer makes a purchase using a Target Card. Once new receivables were settled between TNB and Target, the new receivables were sold to TCC, resold to TRC, and then transferred to the Master Trust.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 41 and demands strict proof thereof.

#### **E. TCC-Sarl's Activities**

42. In late 2010, TCC created TCC-Sarl, a limited liability company organized under the laws of Luxembourg. TCC then transferred all of its issued and outstanding TRC shares and a \$100,000 note to TCC-Sarl in exchange for TCC-Sarl equity and income participating

preferred equity certificates. TRC was then converted into a limited liability company, TR LLC, which was treated as a disregarded entity for U.S. Federal income tax purposes.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 42 and demands strict proof thereof.

43. TCC-Sarl does not, nor did it during the Years in Issue, have a permanent establishment ("PE") in the U.S. within the meaning of Article 5 of the Income Tax Treaty between the U.S. and Luxembourg.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 43 and demands strict proof thereof.

44. Following the creation of TCC-Sarl, Target's securitization program continued to work in the same manner it had previously. TCC-Sarl's activities were limited to those activities conducted by TRC/TR LLC prior to the creation of TCC-Sarl. TRC/TR LLC's activities remained limited to the purchase of receivables from TCC, receiving amounts due on receivables, and raising capital to fund purchases of receivables. As was the case prior to the creation of TCC-Sarl, neither TRC/TR LLC nor TCC-Sarl had a customer base and neither was able to generate new credit card accounts.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 44 and demands strict proof thereof.

45. Following the creation of TCC-Sarl, TNB continued to engage in lending activities on its own behalf with its own customers, the Target Card holders. TNB did not hold itself out and did not do business on TCC-Sarl's behalf. In fact, the Securitization Program was specifically designed to limit the ability of TCC, TCC-Sarl and TR LLC to supervise the day to day activities of TNB.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 45 and demands strict proof thereof.

46. Cardholder Receivables were not "deemed" held by TCC-Sarl. They were held by TCC-Sarl.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 46 and demands strict proof thereof.

47. TCC-Sarl was a controlled foreign corporation which owns 100% of the membership interests in TRC/TR LLC, a domestic limited liability company. TRC/TR LLC owned 100% of the Master Trust's Master Trust Transfer Certificates and 100% of the of the Owner Trust's Owner Trust Certificate. TRC/TR LLC and the Trusts were disregarded for federal income tax purposes. As a result, TCC-SARL was considered as holding the Cardholder Receivables.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 47 and demands strict proof thereof.

**F. TCC-Sarl's Federal Form 1120-F**

48. TCC-Sarl filed Federal Form 1120-F U.S. Income Tax Return of a Foreign Corporation ("Form 1120-F") for each of the Years in Issue.

**ANSWER:** The Department admits the factual allegation in Paragraph 48.

49. In Section I, Income from U.S. Sources not Effectively Connected with the Conduct of a Trade or Business in the United States, of each of its Forms 1120-F filed for each of the Years in Issue, TCC-Sarl reported no taxable income, nor was it required to report any such income.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 49 and demands strict proof thereof.

50. In Section II, Income Effectively Connected with the Conduct of a Trade or Business in the United States, of each of its Forms 1120-F filed for each of the Years in Issue, TCC-Sarl reported no federal taxable income, nor was it required to report any such income.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 50 and demands strict proof thereof.

51. A foreign corporation is not subject to U.S. federal income taxation on a net basis unless it is engaged in a trade or business within the United States. 26 U.S.C. 882(a)(1).

**ANSWER:** The Department admits the existence, force and effect of the statute cited in Paragraph 51 and states that such statute speaks for itself.

52. TCC-Sarl's was engaged in "investment" activities, which does not constitute engaging in a trade or business in the United States. 26 U.S.C. 864(b)(2); Treas. Reg. 1.864-2(c), (d).

**ANSWER:** Paragraph 52 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

53. TCC-Sarl's Form 1120-F for each of the Years in Issue was audited by the Internal Revenue Service, and no adjustments were made to TCC-Sarl's reporting on Sections I and II of such forms.

**ANSWER:** Paragraph 53 contains a legal conclusion, 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, the Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 53 and demands strict proof thereof.

**G. TNB's Withholding Obligation on Interest Paid to the Master Trust**

54. TNB collected interest on receivables owned by the Master Trust and deposited the interest in the trust accounts, which were bank accounts that were under the dominion and control of the trustee for the benefit of TRC, as owner of the Master Trust Transferor Certificate in the Master Trust.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 54 and demands strict proof thereof.

55. Because TRC was a foreign person, this payment was generally subject to 30% U.S. withholding tax under 26 U.S.C. 1441 and 1442.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 55 and demands strict proof thereof.

56. The withholding tax was required to be reported in Section I of a taxpayer's Federal Form 1120-F.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 56 and demands strict proof thereof.

57. However, no withholding was imposed if the interest qualified as "portfolio interest" as described in 26 U.S.C. 881(c).

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 57 and demands strict proof thereof.

58. The interest on the receivables qualified as interest received on a "pass-through certificate."

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 58 and demands strict proof thereof.



59. Because the interest on the receivables qualified as interest on a "pass-through certificate," the interest qualified for the portfolio interest exemption under 26 USC 881(c)(2), and TNB did not withhold any tax on the interest it deposited into the trust accounts.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 59 and demands strict proof thereof.

#### **H. TCC-Sarl's Dividends Paid to TCC**

60. During the Years in Issue, TCC-Sarl was deemed to have paid dividends to its parent, TCC, which were treated as Subpart F income on Target's Federal Consolidated Return as required by IRC Section 952.

**ANSWER:** The Department denies the factual allegations in Paragraph 60.

61. As Subpart F income, these dividends were included in TNB's combined Illinois tax returns.

**ANSWER:** The Department denies the factual allegations in Paragraph 61.

62. Pursuant to Illinois' subtraction modifications to Federal taxable income in 35 ILCS 5/203(b)(2)(O), TNB deducted the dividends from its Illinois taxable base income.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 62 and demands strict proof thereof.

#### **COUNT I**

#### **Petitioner was entitled to deduct dividends paid by TCC-Sarl under 35 ILCS 5/2039(b)(2)(O)**

63. Petitioner realleges and incorporates by this reference the factual allegations made in paragraphs 1 through 62, inclusive, hereinabove.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 62 as if fully set forth herein.

64. On its Federal Consolidated Corporate Income Tax Returns for the Years in Issue, Target reported dividend income deemed received from TCC-Sarl in the amount of approximately \$2,029,557,505, inclusive of \$974,857,505 for the 2012 Tax Year and \$1,054,700,000 for the 2013 Tax Year, as deemed foreign dividend income under IRC Section 952.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 64 and demands strict proof thereof.

65. The Illinois Income Tax Act provides that taxpayers shall deduct 100% of the amount of dividends received or deemed received or paid or deemed paid under Sections 951 through 964 of the Internal Revenue Code. 35 ILCS 5/203(b)(2)(O).

**ANSWER:** Paragraph 65 contains a legal conclusion, not material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

66. For the Years in Issue, Petitioner was required to deduct the dividends paid by TCC- Sari to TCC under 35 ILCS 5/203(b)(2)(O).

**ANSWER:** Paragraph 66 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

67. There is no add-back provision in Illinois law that would allow the Department to include in Illinois base income subject to apportionment income that was never reported or required to be reported on the Federal Form 1120-F.

**ANSWER:** Paragraph 67 contains a legal conclusion, 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, the Department denies the factual allegations in Paragraph 67.

68. The Department's Notice erroneously included income that was properly treated as Subpart F income on Petitioner's Federal returns and properly subtracted from Petitioner's Federal taxable income in arriving at Illinois base income pursuant to IITA sec. 203(b)(2)(0). Its Notice should therefore be rejected.

**ANSWER:** The Department denies the factual allegations in Paragraph 68.

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

- a. Denies each prayer for relief in Count I of the Petition;
- b. Finds the Notices of Deficiency are correct;
- c. Orders judgment in favor of the Department and against the Petitioner, and
- d. Grants any further relief this Tribunal deems just and appropriate.

## **COUNT II**

### **Defendant's Notices are erroneous because TCC-Sarl had no income effectively connected to the United States**

69. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 68, inclusive, hereinabove.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 68 as if fully set forth herein.

70. On its Form 1120-F, TCC-Sarl properly reported no United States taxable income.

**ANSWER:** Paragraph 70 contains a legal conclusion, 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, the Department denies the factual allegations in Paragraph 70.

71. To the extent the Department avers that it may include TCC-Sarl's income in Petitioner's Illinois income tax base subject to apportionment, the only way it could possibly do so is by including TCC-Sarl' s federal taxable income in Illinois base income.

**ANSWER:** The Department denies the factual allegations in Paragraph 71.

72. Because TCC-Sarl had no federal taxable income, the starting point for the calculation of Illinois base income would be zero. *See* Form IL-1120 instructions for the Years in Issue ("Line 1- Enter the amount from U.S. Form 1120, Line 30, or equivalent.").

**ANSWER:** Paragraph 72 contains a legal conclusion, 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, the Department denies the factual allegations in Paragraph 72.

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

- a. Denies each prayer for relief in Count II of the Petition;
- b. Finds the Notices of Deficiency are correct;
- c. Orders judgment in favor of the Department and against the Petitioner, and
- d. Grants any further relief this Tribunal deems just and appropriate.

### **COUNT III**

**Petitioner was entitled to deduct the dividends received from TCC-Sarl because such**

**deduction did not create a “double deduction”**

73. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 72, inclusive, hereinabove.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 72 as if fully set forth herein.

74. In the Department's explanation for the basis of audit adjustments, the auditor stated that allowing the deduction in 35 ILCS 5/203(b)(2)(O) would constitute a double deduction and thus be prohibited by 35 ILCS 5/203(g).

**ANSWER:** The Department denies the factual allegation in Paragraph 74 as it pertains to the explanation for the basis of audit adjustments in the Notice dated June 5, 2018. The Department reserves the right to assert additional arguments.

75. The Illinois Income Tax Act states that "[u]nless specifically provided otherwise, nothing in this Section shall permit the same item to be deducted more than once." 35 ILCS 5/203(g).

**ANSWER:** The Department admits the existence, force and effect of the statute cited in Paragraph 75 and states that such statute speaks for itself.

76. Here, TCC-Sarl earns income in the course of the securitization process described in paragraphs 35 through 44 of this Petition.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 76 and demands strict proof thereof.

77. Based on its income, TCC-Sarl is deemed to have paid a dividend to its parent, TCC, which was then entitled to deduct the deemed dividend from its federal taxable income in arriving at Illinois base income subject to apportionment as provided in 35 ILCS 5/203(b)(2)(O) because the deemed dividend constitutes Subpart F income on Target's Federal Consolidated Return.

**ANSWER:** Paragraph 77 contains a legal conclusion, 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, the Department admits the existence, force, and effect of the statute cited in Paragraph 77 and states that such statute speaks for itself.

78. The dividend income earned by Petitioner is only deducted in Illinois once: when TCC receives the income as Subpart F income.

**ANSWER:** Paragraph 78 contains a legal conclusion, 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, the Department denies the factual allegations in Paragraph 78.

79. The dividend income is not deducted twice; no "double deduction" exists.

**ANSWER:** Paragraph 79 contains a legal conclusion, 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, the Department denies the factual allegations in Paragraph 79.

80. Because Petitioner did not double deduct the dividends paid by TCC-Sarl, the Department's Notice is erroneous and should be rejected.

**ANSWER:** Paragraph 80 contains a legal conclusion, 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, the Department denies the factual allegations in Paragraph 80.

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

- a. Denies each prayer for relief in Count III of the Petition;
- b. Finds the Notices of Deficiency are correct;
- c. Orders judgment in favor of the Department and against the Petitioner, and
- d. Grants any further relief this Tribunal deems just and appropriate.

#### **COUNT IV**

**Alternatively, the interest income earned on the credit card receivables was not subject to a withholding tax because it qualified for the "portfolio interest" exemption**

81. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 80, inclusive, hereinabove.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 80 as if fully set forth herein.

82. 26 USC 881(a)(1) imposes a 30% withholding tax on amounts paid in the form of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodic gains, profits and income to foreign persons from U.S. sources where the foreign person is not subject to U.S. tax by virtue of the lack of a U.S. trade or business or a permanent establishment.

**ANSWER:** The Department admits the existence, force and effect of the statute cited in Paragraph 82 and states that such statute speaks for itself.

83. 26 USC 881(c)(1) provides an exemption from the tax imposed by IRC Section 881(a)(1) for portfolio interest received by a foreign corporation from sources within the United States.

**ANSWER:** The Department admits the existence, force and effect of the statute cited in Paragraph 83 and states that such statute speaks for itself.

84. 26 USC 881(c)(2) defines the term "portfolio interest" to mean any interest which would be subject to tax under subsection (a) and is paid on an obligation which is in registered form, and with respect to which the person who would otherwise be required to deduct and withhold tax from such interest under IRC Section 1442(a) receives a statement which meets the requirements of IRC Section 871(h)(5) that the beneficial owner of the obligation is not United States person. IRC Sections 881(c)(2)(A)-(B).

**ANSWER:** The Department admits the existence, force and effect of the statute cited in Paragraph 84 and states that such statute speaks for itself.

85. Treasury Regulation Section 1.871-14(c)(1)(i)(A) provides that an obligation is treated as registered as to both principal and interest with the issuer and that the transfer of the obligation may only be affected through a surrender of the old instrument and the reissuance of the old instrument to a new holder or issuance by the issuer of a new instrument to a new holder. The regulations also provide a special rule for interest received on pass-through certificates that have been issued by a fund or trust. Specifically, interest received on a pass-through certificate qualifies as portfolio interest received on a pass-through certificate if the pass-through certificate satisfies the registration requirements irrespective of whether any obligation held by the fund or trust to which the pass-through certificate relates is registered.

**ANSWER:** Paragraph 85 contains a legal conclusion, 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, the Department admits the existence, force, and effect of the statute cited in Paragraph 85 and states that such statute speaks for itself.

86. Here, the receivables are sold by TCC to TRC/TR LLC.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 86 and demands strict proof thereof.

87. TRC/TR LLC, the Master Trust and the Owner Trust are characterized as disregarded entities for U.S. tax purposes.

**ANSWER:** Paragraph 87 contains a legal conclusion, 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, the Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 87 and demands strict proof thereof.



88. As a result, TCC-Sarl is deemed to directly own the receivables and receive U.S. source interest income.

**ANSWER:** Paragraph 88 contains a legal conclusion, 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, the Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 88 and demands strict proof thereof.

89. The Master Trust and the Owner Trust both issue Trust Certificates to investors.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 89 and demands strict proof thereof.

90. The Master Trust Certificates can only be transferred through a Certificate Registry that is maintained for the benefit of the Master Trust by a designated transfer agent.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 90 and demands strict proof thereof.

91. The trustee of the Owner Trust maintains a book entry system and certificate registry for the benefit of the Owner Trust certificate holders.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 91 and demands strict proof thereof.

92. In each case, the Certificate Registry provides for the registration of and the transfer and exchange of the respective trust's Trust Certificates.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 92 and demands strict proof thereof.

93. As a result, the Master Trust Certificate and the Owner Trust Certificate are both considered to meet the registration requirements of the portfolio interest exemption found at 26 USC 881(c) and the regulations thereunder.

**ANSWER:** Paragraph 93 contains a legal conclusion, 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, the Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 93 and demands strict proof thereof.

94. Accordingly, payment of interest by Target Cardholders to TRC/TR LLC qualify for the portfolio interest exemption and are not subject to the 26 USC 88I(a)(1) 30% withholding tax.

**ANSWER:** Paragraph 94 contains legal conclusions, not material allegations of fact and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 94 and demands strict proof thereof.

95. TNB had no withholding obligation on the interest it deposited into the trust accounts.

**ANSWER:** Paragraph 95 contains legal conclusions, not material allegations of fact and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent answer is required, the Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 95 and demands strict proof thereof.

96. Because the deposited into the trust accounts is not subject to the 26 USC 88I(a)(1) 30% withholding tax, the interest income earned on the credit card receivables was properly excluded from TNB's Illinois taxable income.

**ANSWER:** Paragraph 96 contains legal conclusions, not material allegations of fact and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 96 and demands strict proof thereof.

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

- a. Denies each prayer for relief in Count IV of the Petition;
- b. Finds the Notices of Deficiency are correct;
- c. Orders judgment in favor of the Department and against the Petitioner; and
- d. Grants any further relief this Tribunal deems just and appropriate.

#### **COUNT V**

**Alternatively, if the dividend income paid by TCC-Sarl should be included in Illinois base income, no receipts from such income should be included in the Illinois apportionment factor numerator**

97. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 96, inclusive, hereinabove.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 96 as if fully set forth herein.

98. As a result of the Department's adjustments to Petitioner's taxable income, the Department also adjusted lines 28 and 29 of Petitioner's Form IL-1120, thus increasing Petitioner's Illinois apportionment factor.

**ANSWER:** The Department admits that Petitioner's Illinois apportionment factor was adjusted to add TCC-SARL sales to the numerator and denominator of Petitioner's Illinois apportionment factor.

99. Specifically, the Department increased Petitioner's "everywhere sales" by \$1,535,814,474 for the 2011 Tax Year and \$1,478,571,792 for the 2012 Tax Year.

**ANSWER:** The Department admits that Petitioner's Illinois "everywhere sales" were adjusted to add TCC-SARL "everywhere sales".

100. The Department increased Petitioner's total sales inside Illinois by \$94,509,531 for the 2011 Tax Year and \$92,937,103 for the 2012 Tax Year.

**ANSWER:** The Department admits that Petitioner's "Illinois sales" were adjusted to add TCC-SARL "Illinois sales".

101. As a result of these increases, Petitioner's apportionment factor rose from 0.058875 to 0.061063.

**ANSWER:** The Department admits that its adjustments to the Petitioner's apportionment factor for the 2012 Tax Year, which included the addition of Target Bank "Illinois sales" to the numerator of the apportionment factor increased Petitioner's apportionment factor for this year from 0.058875 to 0.061063.

102. TCC has no presence in Illinois; its only connection to the state is that it purchases receivables generated by Illinois Cardholders.

**ANSWER:** The term "presence" is vague and therefore the Department denies all factual allegations in Paragraph 102.

103. The Illinois Income Tax Act provides that, in the context of financial institutions, "[d]ividends, and interest from Illinois customers, which are received in [Illinois]," should be sourced to the state. 35 ILCS 5/304(c)(1).

**ANSWER:** Paragraph 103 contains legal conclusions, not material allegations of fact and therefore does not require an answer pursuant to Rule 310(b)(2).

104. TCC did not receive the dividends from TCC-Sarl in Illinois.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 104 and demands strict proof thereof.

105. TCC is not an "Illinois customer."

**ANSWER:** The term "Illinois customer" is vague and therefore the Department denies all factual allegations in Paragraph 105.

106. Because TCC did not receive the dividends from TCC-Sarl in Illinois, to the extent the Department is correct that the receipts should be included in Petitioner's base income, the receipts should be included in the denominator of its Illinois apportionment factor, but excluded from the numerator.

**ANSWER:** Paragraph 106 contains legal conclusions, not material allegations of fact and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies any factual allegations contained in Paragraph 106 and demands strict proof thereof.

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

- a. Denies each prayer for relief in Count V of the Petition;
- b. Finds the Notices of Deficiency are correct;
- c. Orders judgment in favor of the Department and against the Petitioner; and
- d. Grants any further relief this Tribunal deems just and appropriate.

#### **COUNT VI**

**Alternatively, if the dividend income paid by TCC-Sarl should be included in Illinois base income, the receipts should be excluded from the numerator of Petitioner's Illinois apportionment factor**

107. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 106, inclusive, hereinabove.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 106 as if fully set forth herein.

108. For the Years in Issue, business income of a financial organization in Illinois was required to be apportioned by multiplying such income by a fraction, the numerator of which is its business income from sources within the state, and the denominator of which is its business income from all sources. 35 ILCS 5/304(c)(1).

**ANSWER:** Paragraph 108 contains a legal conclusion, 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, the Department admits the existence, force, and effect of the statute cited in Paragraph 108 and states that such statute speaks for itself.

109. In determining whether the activity of a nonresident taxpayer conducted in Illinois is sufficient to create nexus, the principle established in *Appeal of Joyce, Inc.* Cal. Stat. Bd. Of Equal., commonly known as the "Joyce Rule," applies. 86 Ill. Admin. Code 100.9720.

**ANSWER:** The Department admits the existence, force and effect of the case and statute cited in Paragraph 109 and states that such case and statute speak for themselves.

110. The Joyce Rule states that where a member of an Illinois combined group does not have nexus with Illinois, its receipts should be included in Illinois base income and the denominator of the Illinois apportionment factor, but excluded from the numerator.

**ANSWER:** The Department admits the existence, force and effect of the case cited in Paragraph 110 and states that such case speaks for itself.

111. TCC has no connection with Illinois.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 111 and demands strict proof thereof.

112. TCC was a Minnesota corporation.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 112 and demands strict proof thereof.

113. TCC did not maintain any offices in Illinois.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 113 and demands strict proof thereof.

114. TCC did not own or rent any property in Illinois.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 114 and demands strict proof thereof.

115. TCC did not have any employees located in Illinois.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 115 and demands strict proof thereof.

116. TCC did not perform any services in Illinois.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 116 and demands strict proof thereof.

117. TCC did not undertake any collection activities in Illinois.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 117 and demands strict proof thereof.

118. TCC did not have any agents acting on its behalf in Illinois.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 118 and demands strict proof thereof.

119. TCC engaged in no business activities within Illinois during the Years in Issue.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 119 and demands strict proof thereof.

120. TCC did not have any receipts from Illinois sources.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the factual allegations in Paragraph 120 and demands strict proof thereof.

121. As a result, TCC had no connection with the State of Illinois that constituted "substantial nexus " under *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

**ANSWER:** Paragraph 121 contains legal conclusions, not material allegations of fact and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department lacks sufficient knowledge to either admit or deny any factual allegations in Paragraph 121 and demands strict proof thereof.

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

- a. Denies each prayer for relief in Count VI of the Petition;
- b. Finds the Notices of Deficiency are correct;
- c. Orders judgment in favor of the Department and against the Petitioner; and
- d. Grants any further relief this Tribunal deems just and appropriate.



Respectfully Submitted,

**KWAME RAOUL**  
Attorney General  
State of Illinois

By: /s/ Jessica Odigie  
One of the Department's Attorneys

Alan Lindquist  
(312) 814-7054  
alan.lindquist@illinois.gov

Lori Jordan  
(312) 814-3842  
lori.jordan@illinois.gov

Jessica Odigie  
(312) 814-3514  
jessica.odigie@illinois.gov

Special Assistant Attorneys General  
Illinois Department of Revenue  
100 W. Randolph St., 7-900  
Chicago, IL 60601

Dated: Friday, April 05, 2019

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF SANGAMON    )

Target National Bank now known as Target Enterprise Inc.,  
v.  
Illinois Department of Revenue

DOCKET NO. 18-TT-87

**VERIFICATION AND AFFIDAVIT AS TO LACK OF SUFFICIENT KNOWLEDGE**

Michael Pasquarello, being first duly sworn, deposes and says that he is an employee and duly authorized agent of the Illinois Department of Revenue (“Department”), that he has read the foregoing Department’s Answers to Taxpayer’s Petition, that he is well acquainted with its contents, and under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, he certifies that the statements set forth in that instrument are true and correct, except as to allegations claiming lack of sufficient knowledge (Paragraphs 2, 5, 18, 21 through 47, 49 through 50, 53 through 59, 62, 64, 76, 82, 86 through 96, 104, and 111 through 121) pursuant to 735 ILCS 5/2-610(b), which he verily believes to be true.

\_\_\_\_\_/s/signature forthcoming \_\_\_\_\_  
Michael Pasquarello  
Revenue Auditor Supervisor  
Illinois Department of Revenue