IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

TARGET NATIONAL BANK (n/k/a TARGET ENTERPRISE, INC.)	)	
Petitioner,	)	No. 18 TT 87
v.	)	
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
Respondent.	)	

NOTICE OF MOTION

TO: *See Certificate of Service*

PLEASE TAKE NOTICE that on **February 13, 2018** at the hour of **10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before Chief Administrative Law Judge Conway, or any judge sitting in his place and stead, on the telephonic status conference set for that time, for **Petitioner's Motion for Summary Judgment and Petitioner's Memorandum in Support of Its Partial Motion for Summary Judgment**, a copy of which is attached hereto.

Respectfully Submitted,
TARGET NATIONAL BANK
(n/k/a TARGET ENTERPRISE, INC.)

By: ______________________________
One of Its Attorneys

Fred O. Marcus
Christopher T. Lutz
HORWOOD MARCUS & BERK CHARTERED
500 W. Madison St., Ste. 3700
Chicago, IL 60661

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

TARGET NATIONAL BANK (n/k/a TARGET ENTERPRISE, INC.)	)	
Petitioner,	)	
v.	)	No. 18 TT 87
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
Respondent.	)	

PETITIONER'S MOTION FOR SUMMARY JUDGMENT

The Petitioner, Target National Bank, now known as Target Enterprise, Inc. ("Petitioner"), by and through its attorneys, Horwood Marcus & Berk Chartered, hereby respectfully moves this Court pursuant to 735 ILCS 5/2-1005(a) for summary judgment in its favor against the Defendants on Petitioner's Petition ("Petition"). In support of this Motion for Summary Judgment, Petitioner States as follows:

Summary Judgment

1. Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

2. On August 2, 2018, Petitioner filed its Petition against the Illinois Department of Revenue.

3. To date, the Illinois Department of Revenue ("Respondent") has not filed an Answer to the Petition.

4. The Petition includes six (VI) Counts against the Respondent, with each Count relating to two Notices of Deficiency for the tax years ending January 30, 2012 and January 31, 2013 ("Years in Issue").

5. The Instant Motion for Summary Judgment relates to Count I.

6. There are no material facts in dispute with respect to this Motion.

7. The primary issue in this case is whether Petitioner was entitled to deduct dividends received or deemed received as Federal Subpart F income for purposes of calculating its Illinois base income.

8. Petitioner is entitled to judgment as a matter of law because for the Years in Issue, Illinois law provided a subtraction modification from Federal taxable income which required taxpayers to deduct 100 percent of dividends received or deemed received under Sections 951 through 964 of the Internal Revenue Code. 35 ILCS 5/203(b)(2)(O).

9. Petitioner's Memorandum of Law in Support of its Motion for Partial Summary Judgment is attached hereto as **Exhibit A**.

WHEREFORE, Petitioner respectfully requests that this Tribunal grant its Partial Motion for Summary Judgment, enter an Order reversing the Respondent's adjustments to Petitioner's taxable income, and grant such further relief as this Tribunal deems just and proper. Petitioner requests a briefing schedule to be set that permits Petitioner to file a reply to any response the Respondent may file.

DATED: January 18, 2018

Respectfully Submitted,

TARGET NATIONAL BANK
(n/k/a TARGET ENTERPRISE, INC.)

By: ______________________
One of Its Attorneys

Fred O. Marcus
Christopher T. Lutz
HORWOOD MARCUS & BERK CHARTERED
500 W. Madison St., Ste. 3700
Chicago, IL 60661

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that she caused a copy of the foregoing **PETITIONER'S MOTION FOR SUMMARY JUDGMENT** to be served on other counsel of record by electronic mail and also by enclosing the same in an envelope, properly addressed and delivered by FedEx before the hour of 5:00 p.m. on the 18 day of January, 2018, addressed as follows:

Mr. Alan Lindquist
Illinois Department of Revenue
100 W. Randolph Street, 7th Floor
Chicago, IL 60601

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

TARGET NATIONAL BANK (n/k/a TARGET ENTERPRISE, INC.) Petitioner, v. THE ILLINOIS DEPARTMENT OF REVENUE, Respondent.	))))))))))	No. 18 TT 87

PETITIONER'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

Fred O. Marcus
Christopher T. Lutz
Horwood Marcus & Berk Chtd.
500 W. Madison St., Ste. 3700
Chicago, IL 60661

4581158/1/02678.008

I. STATEMENT OF UNDISPUTED FACTS

Target Corporation ("Target") is the parent corporation and sole shareholder of a group of operating companies that conduct a retail business. Petition, ¶ 20, 23. Target operates in two reportable segments: Retail and Credit Card. Petition, ¶ 21. Target's Credit Card segment offers credit to qualified Target customers through Target National Bank ("TNB" or "Petitioner") by issuing branded credit cards. Petition, ¶ 22. Target's branded credit cards include a Target VISA Card and the Target RED Card (collectively referred to as the "Target Cards" and the "Target Card program"). During the tax years ending January 31, 2012 and January 31, 2013 ("Years in Issue"), TNB was the designated filer for the Illinois unitary business group comprised of related financial organizations. Petition, ¶ 11.

Target is also the sole shareholder of Target Capital Corporation ("TCC"), which is a member of TNB's unitary business group. Petition, ¶ 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 TCC. Petition, ¶ 11. TCC-Sarl does not, nor did it during the Years in Issue, have a permanent establishment in the U.S. within the meaning of Article 5 of the Income Tax Treaty between the U.S. and Luxembourg. Petition, ¶ 43. On Target's Federal income tax returns, TCC-Sarl's deemed dividend payments were includible in TCC's income as Subpart F income pursuant to Sections 951 through 954 of the Internal Revenue Code of 1986, as amended ("IRC"). Petition, ¶11.

On its original Illinois returns, Petitioner subtracted TCC-Sarl's deemed dividend payments from its Illinois combined base income as required by 35 ILCS 5/203(b)(2)(O)

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(sometimes referred to herein as "Subsection (b)(2)(O)"). In its Notices of Deficiency for the Years in Issue ("Notices"), the Department adjusted Petitioner's combined base income to include the deemed dividends paid by TCC-Sarl, essentially reversing the Subsection (b)(2)(O) foreign dividend subtraction modification. Petition, ¶15. The Department also included the income at issue in Petitioner's Illinois apportionment factor, apportioning a percentage to Illinois. Petition, ¶19.

II. ARGUMENT

Summary judgment is an appropriate remedy for Count I of Petitioner's Petition. The question in this case is whether Petitioner was entitled to deduct dividends paid by TCC-Sarl under Subsection (b)(2)(O). This is purely a legal question. 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 Section 951 through 964 of the Internal Revenue Code. 35 ILCS 5/203(b)(2)(O). The dividends at issue paid by TCC-Sarl to TCC were treated as Subpart F income on Target's Federal Consolidated Return as required by IRC Section 952. Petition, ¶60. Because the dividends were deemed received under Section 952, TNB properly excluded the income from its combined Illinois base income. And because the dividends were excluded by Subsection (b)(2)(O), they were properly excluded from TNB's apportionment factor under 86 Ill. Admin. Code 100.3370(a)(2)(C)(ii).

A. Summary judgment is an appropriate remedy.

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). The use of summary judgment procedure is encouraged in proper cases.

Kimbrough v. Jewel Companies, Inc., 92 Ill. App. 3d 813, 819 (1st Dist. 1981). The underlying policy of summary judgment facilitates litigation because the procedure benefits not only litigants, by saving time and expenses, but also the community by avoiding congestion of trial calendars and the expense of unnecessary trials. *See Seefeldt v. Millikin Nat. Bank of Decatur*, 154 Ill. App. 3d 715, 718 (4th Dist. 1987). In the present matter, summary judgment is appropriate because the material facts are not in question and Petitioner is entitled to judgment as a matter of law.

B. For the Tax Years in Issue, Illinois Law Requires the Dividends Deemed Received under IRC Section 952 to be Excluded from Illinois Base Income.

i. Illinois Law Unambiguously Provides a Dividends Received Deduction.

Illinois law is clear with respect to how dividends deemed paid or received as Subpart F income should be treated for purposes of calculating Illinois taxable base income. Specifically, taxable income should be calculated beginning with the taxpayer's federal taxable income and by deducting from the total "for taxable years on or after December 31, 1988, 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).

Here, the income at issue was deemed received from TCC-Sarl under IRC 952. Petition, ¶60. Illinois law therefore unequivocally provided a subtraction modification for the dividend income.

ii. The Department's Notices Provides no Legitimate Basis for Adjusting Petitioner's Dividends Received Deduction.

In its Notices, the Department's only response to Petitioner's position that it was entitled to a dividends received deduction is that it "adjusted [TNB's] subtraction

modifications for foreign dividends on Schedule J, Foreign Dividends, to reflect the correct amount allowed by Illinois law." In support of this adjustment the Notices cite to "35 ILCS 5/203(b)(2)(G), (b)(2)(O), (h)."

Subsection (b)(2)(G) merely provides a subtraction modification for income included under IRC 78, and is not relevant to this discussion. Subsection (b)(2)(O) explicitly provides a subtraction modification for income earned pursuant to IRC 952. Subsection (h) provides as follows:

> Legislative intention. Except as expressly provided by this Section there shall be no modifications or limitations on the amounts of income, gain, loss or deduction taken into account in determining gross income, adjusted gross income or taxable income for federal income tax purposes for the taxable year, or in the amount of such items entering into the computation of base income and net income under this Act for such taxable year, whether in respect of property values as of August 1969 or otherwise.

It is unclear how Subsection (h) supports the Department's denial of Petitioner's deduction pursuant to Subsection (b)(2)(O).

In Illinois, during the Years in Issue, a combined group calculated its income or loss by starting with U.S. Form 1120, Line 30, or its equivalent. *See* IL-1120 Instructions. Taxpayers were then required to make modifications pursuant to Section 203 of the Illinois Income Tax Act (sometimes referred to herein as the "IITA"). No Illinois authority permits the Department to otherwise adjust the Federal starting point for Illinois base income. Indeed, as IITA 203(h) makes clear, no modifications or limitations other than those contained in IITA 203 should be made on a taxpayer's Illinois Income. Petitioner's use of the subtraction modification in Subsection (b)(2)(O) therefore

comported with the General Assembly's intention to provide a subtraction modification for all income received or deemed received under IRC Sections 951 through 964.

iii. Petitioner's use of the Subsection (b)(2)(O) Subtraction Modification does not Result in a "Double Deduction."

In addition to the explanations for the Department's adjustments on its Notices, the Auditor's Comments, stamped as IDOR 000011 through IDOR 000020, provide another explanation for the basis of its audit adjustments. The Department's Comments are attached hereto as **Attachment 1**. The Comments state that "TCC-Sarl filed an 1120-F which showed zero income because all income was paid as a dividend to another member of the unitary group (Target Capital Corp)." The Comments then refer to IITA Subsection 203(g), which states that "[u]nless specifically provided otherwise, nothing in this Section shall permit the same item to be deducted more than once." Again, it is unclear how this section nullifies the deduction provided by Subsection (b)(2)(O), but this is the only other argument the Department provided to support its adjustment to Petitioner's income.

TNB's original returns do not reflect a double deduction. On its Federal Consolidated returns, which were reviewed and unchanged under the Internal Revenue Service's Compliance Assurance Process, Target included the income from TCC-Sarl as Subpart F income pursuant to IRC 952. The Auditor's Comments, however, appear to suggest that because the income is not presented on the 1120-F, the use of the Subsection (b)(2)(O) deduction creates a "double deduction." This is not the case. Indeed, zero income was reported on the 1120-F because TCC-Sarl had no "effectively connected" income with the United States. Petition, ¶¶ 48-53. If TCC-Sarl did have "effectively connected" income, it would have reported that income on Form 1120-F. The IRC 952

deemed dividend had no impact on whether TCC-Sarl was initially required to report income on a Form 1120-F.[1] The purpose of Subpart F income is to create a deemed dividend to a U.S. shareholder (TCC) of certain earnings of a controlled foreign corporation (TCC-Sarl) which would not otherwise be reported as taxable income on the controlled foreign corporation's Form 1120-F.

The purpose of the Subsection (b)(2)(O) subtraction modification is not to tax Subpart F income, which is never included on an 1120-F. By suggesting that the Subsection (b)(2)(O) subtraction modification should be disregarded where income is not otherwise included on an 1120-F, the Department's position effectively nullifies the purpose of the deduction. Reporting zero effectively connected income on an 1120-F, moreover, does not constitute a "deduction." This is instead a function of what income must be reported on an 1120-F as required by IRC Sections 882(a)(1); 865(b)(2); and Treas. Reg. 1.864-2(c), (d). It is not the Department's prerogative to question the figures reported on Petitioner's Federal Consolidated Returns; Illinois simply adopts the Federal figures as the "starting point" subject only to the modifications provided in IITA 203.

Subsection 203(b)(2)(O) unambiguously provides a deduction for dividends paid pursuant to IRC Sections 951 through 964. As intended by the legislature, Target deducted these dividends from Line 30 of its Federal Consolidated Return. This deduction was only taken once. The Department's adjustments to Petitioner's Illinois base income were therefore erroneous, and its Notices should be withdrawn.

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[1] In fact, no dividends were actually "paid." Rather, the dividends were deemed dividends by virtue of IRC Section 952.

C. For the Tax Years in Issue, Illinois Law Requires the Dividend Income Received from TCC-Sarl to be excluded from the Illinois Apportionment Factor.

As explained, Petitioner correctly deducted the dividends received from TCC-Sarl under 35 ILCS 5/203(b)(2)(O). Illinois law provides that such income should be similarly eliminated from the Illinois apportionment factor. The Department's regulations provide:

> For taxable years ending prior to December 31, 1995, dividends included in federal taxable income or federal adjusted gross income are excluded from the sales factor if eliminated in combination or to the extent subtracted under IITA Section 203… (b)(2)(O).

As a result, the dividend income paid by TCC-Sarl was correctly excluded from the Illinois apportionment factor.

CONCLUSION

For the foregoing reasons, Petitioner submits that the Department's Notices of Deficiency with respect to the subtraction modifications of the IRC 952 dividends were erroneous and not supported by fact or law. Accordingly, Petitioner is entitled to summary judgment on Count I of its Petition as a matter of law.

Respectfully Submitted

TARGET NATIONAL BANK
(n/k/a TARGET ENTERPRISE, INC.)

By:______________________________
One of Its Attorneys

Fred O. Marcus
Christopher T. Lutz
Horwood Marcus & Berk Chtd.
500 W. Madison St., Ste. 3700
Chicago, IL 60661
(312) 606-3200

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that she caused a copy of the foregoing **PETITIONER'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT** to be served on other counsel of record by electronic mail and also by enclosing the same in an envelope, properly addressed and delivered by FedEx before the hour of 5:00 p.m. on the 12th day of January, 2018 addressed as follows:

Mr. Alan Lindquist
Illinois Department of Revenue
100 W. Randolph Street, 7th Floor
Chicago, IL 60601

4581158/1/02678.008

Attachment 1

AUDITOR'S COMMENTS

TARGET NATIONAL BANK
33 SOUTH 6TH STREET
CC-1029
MINNEAPOLIS, MN 55403

FEIN: 41-1721813

AUDIT PERIOD: 2/1/2011 TO 1/31/2013

AUDIT DISCUSSED WITH

MICHAEL DAMAN, SENIOR TAX ANALYST
612-761-6218

GENERAL BACKGROUND INFORMATION

My audit was conducted without a conflict of interest with the taxpayer or their representatives.

Target Corporation, headquartered in downtown Minneapolis, MN, was incorporated in Minnesota on 2/11/1902. Target is a publicly traded company. The Company operates two reportable segments: Retail and credit Card.

Target operates as large format general merchandise and food discount stores located throughout the United States and a fully integrated online business. The company offers a wide variety of merchandise including food, clothing and housewares to name a few. The credit card segment offers credit to qualifying guests through branded proprietary credit and debit cards.

Target National Bank (TNB) was a 100% owned subsidiary of Target Corp. TNB and two other subsidiaries were identified as "financial organizations" and excluded from the Target Illinois unitary business group as filed. In the audit of the previous cycle for this entity four entities qualify as "financial" organizations under Section 1501(a)(8) of the Illinois Income Tax Act (IITA). TNB, with the other three financial companies, filed a separate Illinois unitary return. The financial group consisted of:

> **Target National Bank, N.A.** (FEIN: 41-1721813) issued credit cards (VISA & Target) to Target customers and was based in South Dakota.
>
> **Target Capital Corporation** (FEIN:41-1791337) purchased the accounts receivable from Target Corporation and resold them to Target Receivables Corporation. This entity was based in Minnesota.

Target Bank (FEIN: 20-1340396) provided services to Target Receivables Corporation. This entity was located in Minnesota and had some operations in Arizona.

TCC Corporation S.a.r.l. (FEIN 98-0688293) incorporated 1/12/2011 with principal place of business in Luxembourg. This was a holding company for Target Receivables LLC, a disregarded entity. The direct owner is Target Capital Corporation; this entities files an US 1120F for federal purposes.

The prior audit cycle also included:

Target Receivables Corporation (FEIN: 41-1812153) held the accounts receivable from Target Corporation (stores). This entity was changed to Target Receivables LLC, with all ownership transferred to TCC Corporation S.a.r.l.

See further discussion regarding the unitary group above in the unitary determination, 80/20 related party.

This audit was a mandatory audit assigned as a result of the prior cycle results.

The following due dates are affiliated with this audit period:

	01/31/12	01/31/13
ORIGINAL DUE DATE	04/15/12	04/15/13
EXTENDED DUE DATE	11/15/12	11/15/13
ORIGINAL FILED	11/09/12	11/05/13
ORIGINAL STATUTE	11/15/15	11/15/16
EXTENDED STATUTE	11/15/16	
EXTENDED STATUTE	08/14/18	08/14/18

MATH ERROR/BALANCE DUE
No math errors were noted. TNB did not have a balance due with the department.

A compliance check showed TNB is not registered for and does not pay withholding tax; sales tax is not applicable. All employees for TNB are located in South Dakota so withholding is also not paid at this time.

CAA was not used for this audit. The taxpayer provided sufficient support including electronic files for large data so CAA was not needed.

DISCUSSION OF ISSUES

UNITARY DETERMINATION
The taxpayer filed an Illinois unitary return that included the three entities determined to be financial institutions.

There was common ownership, same general line of business, vertical integration and strong centralized management in all members of the group. All members of the group are in the same business or a related and supporting business.

Examining the income statement and balance sheet showed inter-company sales as well as shared purchasing of products and supplies. A schedule of inter-company transactions was provided as part of the audit workpapers.

The accounting, payroll and management for all companies are conducted from the headquarters in Minneapolis.

The activities of the group were integrated with, dependent upon and contribute to each other making them all members of the unitary group.

80/20 Company:
All forms 5471 were examined. Examining the org chart, we noted most foreign affiliates for which forms 5471 were filed are all listed as disregarded entities, single member LLCs or U.S. partnerships for tax purposes. There was one exception, TCC Corporation SARL, Luxembourg, doing business as "other investment activities".

On January 12, 2011 Target Capital Corp transferred all outstanding stock of Target Receivables and cash to TCC Corporation S.a.r.l. (TCC-SARL), an affiliated entity doing business in Luxembourg. At the same time, Target Receivables Corp converted from a corporation to a limited liability company, a single member LLC, under Minnesota state law, owned by TCC-SARL. Target Capital Corp, a member of this financial unitary group under audit, has direct ownership of this TCC-SARL. Target Receivables LLC (now a "foreign" disregarded entity) had significant income and sales, some sourced in IL.

For this audit period, the financial group consisted of the four entities previously listed above. However, all of TCC-SARLs income is paid to Target Capital Corp as dividends so TCC-SARL reported zero income on the 1120F filed as well as for Illinois. Target Capital, in turn, claims all dividends received from TCC-SARL as a foreign dividend deduction so none of TCC-SARLs income is taxed by Illinois.

For taxpayers that apportion their income under IITA § 304(c), the 80/20 test is based on the apportionment factor for financial organizations in IAC § 100.3400. The numerator of the 80/20 test is the financial organization's receipts in the U.S. and the denominator is total receipts worldwide. We requested the source of all income and receipts and determined that over 80% of the receipts (all actually) are sources in the U.S. so TCC-SARL was determined not to be an 80/20 company increasing FTI by the company's income.

Because TCC-SARL shows zero income on the 1120F, this is what the IL-1120 also reflects. However, with TCC-SARL not being an 80/20 company the dividends paid by TCC-SARL to Target Capital Corp will not be allowed as foreign dividends, having a significant tax effect.

FEDERAL TAXABLE INCOME
The Target consolidated return was reviewed and a schedule prepared separating the financial and regular filers reconciling both groups to the consolidated return. Note, this auditor is also doing an audit on Target Corporation for the same years. Lines 1 of the IL 1120 returns were verified to line 30 of the US 1120 returns.

No NOL deduction (line 29a) or any special deduction (Line 29b) was allocable to this financial group.

No changes were made to FTI as filed; also see 80/20 discussion above for group changes.

RAR
Target (including TNB) is under continuous federal audit and currently has no changes to report.

ADDITION MODIFICATIONS
Municipal Interest
TNB reported a municipal interest addition both years. This was verified to the federal schedule K and M-3 and correct as filed.

IL Income & Replacement Tax
An income/replacement tax addition was reported in YE1/2013, none in the first year. The detail of income taxes paid and calculated by state was provided and the amounts reported were found correct as filed.

Bonus Depreciation
A bonus depreciation addition was reported in both years. The amounts tied to Form 4562 and were correct as filed. A bonus depreciation schedule prepared in the prior audit was expanded to include the new additions. No reversals were applicable for the two years under audit and no changes were made to the addition as filed.

80/20 Related Party
We found no intangible expenses paid from the domestic entities to any foreign affiliates so determined the 80/20 related party expense addition is not applicable for this unitary group. However, we did note that Target Corporation, the parent company of the non-financial as well as the financial group, paid interest to TCC-SARL. This would potentially be an 80/20 addition modification on the Target Corp return except the financial group will now pay tax on the interest income with the changes discussed above.

SUBTRACTION MODIFICATIONS
Bonus Depreciation
A bonus depreciation subtraction was claimed in both years. The taxpayer's workpapers were examined. We expanded the scheduled started in a previous audit cycle to include the new bonus assets. Our calculation resulted in a reduction to the subtraction claimed in 1/2012 and an increase in 1/2013. See workpapers in the audit file for calculations and schedules.

Foreign Dividend
The taxpayer claimed a foreign dividend subtraction for the dividends received from SARL as well as other foreign dividends. We disallowed the TCC-SARL dividends per audit, $974,857,505 in 1/2012 and $1,054,700,000 in 1/2013. TCC-SARL is a member of the unitary group, not a foreign entity. TCC-SARL filed an 1120-F which showed zero income because all the income was paid as a dividend to another member of the unitary Group (Target Capital Corp).

IITA 203(g) Double deductions. Unless specifically provided otherwise, nothing in this Section shall permit the same item to be deducted more than once.

In the original return filed, the taxpayer claimed a subtraction of $13,367 for Illinois tax refunded. The taxpayer had this on the incorrect line of the schedule M and it was not allowed by the department. Support was provided; we prepared a schedule M correctly and allowed this

subtraction. Note that an RCN was issued on this and would normally require a math error adjustment. We determined this only had a $15 tax effect so included it as an audit adjustment.

Except as discussed, no other subtraction modifications were claimed and no other changes were made.

NON-BUSINESS INCOME

No non-business income was claimed by the taxpayer. All income earned by the TNB was business income in accordance with the constitution of the United States. No changes were made in this area.

PARTNERSHIP INCOME

None reported or noted per audit.

APPORTIONMENT

Sales Everywhere and Illinois

TNB is a financial organization required to apportion its income under section 304(c) of the IITA. Receipts include interest income, various bank fees, and credit card revenues. A detailed schedule, by company, was provided breaking down the various income sources as well as the amounts allocated to Illinois. A detail was also provided for TCC-SARL (flow through from Target Receivables LLC).

Three of the financial group entities had sales in Illinois. The taxpayer included only TNB sales in the numerator, not the Illinois sales for TCC-SARL (sales from Target Receivables LLC) and Target Bank (TB). With the change in the Illinois Income Tax Act 304(c)(3) effective for years ending 12/31/08, the denominator of the apportionment formula SHOULD include ALL items of business income which are included in base income. Part (iii) states "Interest income, commissions, fees, gains on disposition, and other receipts from consumer loans that are not secured by real or tangible personal property are from sources in this State if the debtor is a resident of this State".

Further, regulation 100.3405(a) states:

> *In General. For taxable years ending on or after December 31, 2008, the business income of a financial organization shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is its gross receipts from sources in this State or otherwise attributable to this State's marketplace and the denominator of which is its gross receipts everywhere during the taxable year.* (IITA Section 304(c)(3))

The taxpayer did not report sales for TCC-SARL (no numerator or denominator). After receiving the sales detail by state, and having now including all income for this entity in FTI, we included the sales per the schedule. This resulted in the following adjustment:

	FYE1/12	FYE1/13
Everywhere as filed	$ 332,417,987	$ 317,790,102
Add: TCC SARL	1,538,104,895	1,480,911,645
Other Adjustments	-2,290,421	-2,339,853
Adjusted Everywhere	$1,868,232,461	$1,796,361,894

	FYE1/12	FYE1/13
Illinois as filed	$ 19,571,261	$ 18,516,648
Add: TCC SARL	93,941,171	91,794,041

Add Target Bank	568,360	1,314,134
Adjusted Illinois	$ 114,080,792	$ 111,624,823

The taxpayer did not agree to adjustment, arguing Target Bank and TCC-SARL have no nexus in Illinois, specifically meaning payroll and property. I pointed out the Illinois customer gives the bank nexus and noted the Illinois regulation 100.3405 as well as excerpts from the IITA sect 304(c) in a memo to the taxpayer.

In the previous audit cycle for TNB (FYE1/10 and 1/11), the same issue was encountered. This auditor could not make a clear-cut determination at that time if the company had nexus or if the Illinois sales should be included in the numerator. A technical request was submitted to the department for clarification on the statute applicable to the issue (IITA 304(c)(3)) as well as determining if TRC has nexus. Following is a discussion of the issue in question and the technical department's response.

> The United States Constitution limits a state's power to subject to income tax foreign corporations and other nonresidents. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction the state seeks to tax. (Quill Corp. v. N. Dakota, 504 U.S. 298 (1992)) The Commerce Clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state. (Id.) In the case of foreign corporations, Illinois may assert nexus to tax unless the corporation falls under the protection conferred by Public Law 86-272. (15 U.S.C. § 381).
>
> Thus, regardless of state statutes, which govern a state's apportionment of income, that income cannot be taxed unless the entity to be taxed has nexus with the state according to U. S. Constitutional jurisprudence.

However, our technical department further stated that a physical presence is not required to satisfy the "substantial nexus" requirement of the Commerce Clause. After reviewing subsequent information provided by the taxpayer at that time (the prior audit cycle) we determined TRC did have nexus in Illinois, through their agents TNB and Target Corp, and the TRC's Illinois sales should be included in the numerator.

During this audit cycle there have been no changes in how the company does business, the type of business or their customer base. The only change was to change TRC into a single member LLC, with income reported by TCC-SARL. This audit also determined that TCC-SARL is not a foreign (80/20) company and all income and factors should be included in the unitary group.

Please see additional discussion below in the taxpayer's position section.

Throwback Sales were not applicable in this audit because TNB is a financial institution.

No other changes were made to Illinois sales reported.

CREDITS
No tax credits were claimed and none noted per audit.

ILLINOIS NET LOSS DEDUCTION
Not applicable

TAXPAYER'S POSITION
Findings were discussed with Michael Daman, senior tax analyst at Target. We informed the taxpayer of the changes made and requested the results to be reviewed within 30 days.

UN-AGREED ISSUES

As background we need to briefly explain the issue in the audit on the prior cycle for TNB. The unitary group included a subsidiary, Target Receivables Corporation (FEIN: 41-1812153), that had Illinois customers and Illinois sales the taxpayer did not include in the numerator. The taxpayer claimed Target Receivables Corporation did not have Illinois nexus. In the audit process we determined the company did have nexus through the agent Target Corporation and Target National Bank, made adjustments accordingly, and the audit was eventually submitted as un-agreed.

On January 12, 2011 (basically the start of this audit cycle), the taxpayer changed Target Receivables Corporation to a single member LLC and transferred ownership to TCC Corporation S.a.r.l. (FEIN 98-0688293) (TCC-SARL), a holding company incorporated with Luxembourg on the same date, 1/12/2011. The direct owner is Target Capital Corporation; TCC-SARL files an US 1120F for federal purposes. The taxpayer includes TCC-SARL as a member of the unitary group. However, TCC-SARL has no income because all income is paid as dividends to the direct owner; Target Capital Corp. Target Capital Corp takes the foreign dividend subtraction modification for the dividend it receives from TCC-SARL.

Illinois treats disregarded entities as divisions of the entity that owns them. Target Receivables LLC (TR-LLC) has no foreign activity. All customers are in the USA and the company has no foreign property or payroll. TCC-SARL has no foreign activity, property or payroll so it was correctly treated (included) as a member of the Illinois unitary group. To summarize the disagreed issues:

- We did not allow the foreign dividends, paid by TCC-SARL, as a subtraction modification.
- We included TR-LLC sales in the apportionment, both the denominator and numerator based on the same nexus argument as in the prior audit cycle. Everywhere sales and Illinois sales were taken from a schedule provided by the taxpayer.
- Target Bank Illinois sales included in the numerator

The initial audit results were presented to the taxpayer on 3/3/16 and a discussion for the basis of the audit adjustments on 3/4/16. The taxpayer responded with a rebuttal to the audit results on 4/1/16 which can be found in the audit file for addition detail.

AUDITOR'S ACTIONS
In summary, we did not allow the foreign dividend subtraction modification for dividends paid by TCC-SARL. We also increased everywhere and Illinois sales by a significant amount to include sales from TR-LLC. Specific amounts can be found in the discussion above in the applicable headings

AUDITORS REBUTTAL
The taxpayer did not agree with our income and apportionment changes. We were asked to provide a legal analysis which we did, citing regulations and statutes including 304(c)(3) and applicable regulation, 100.3405.

Foreign Dividend Subtraction Modification

The dividend in question was paid by TCC-SARL. TCC-SARL is not an 80/20 company, a fact not disputed by the taxpayer. The taxpayer included TCC-SARL as a member of the Illinois unitary group.

However, the taxpayer's argument is based on IITA203(b)(2)(O) which states in part:

> *An amount equal to: (i) 85% for taxable years ending on or before December 31, 1992, or, a percentage equal to the percentage allowable under Section 243(a)(1) of the Internal Revenue Code of 1986 for taxable years ending after December 31, 1992, of the amount by which dividends included in taxable income and received from a corporation that is not created or organized under the laws of the United States or any state or political subdivision thereof, including, for taxable years ending on or after December 31, 1988, dividends received or deemed received or paid or deemed paid under Sections 951 through 965 of the Internal Revenue Code, exceed....*

The taxpayer further stated:

> "In the case of TCC Corporation Sarl ("TCC-SARL"); an entity incorporated with the Grand Duchy of Luxembourg, it would seem that this entity is incorporated outside of the United States and that the language would apply. Further, the dividends would qualify as Subpart F as provided by IRC Section 951. Meeting both components of the language used above it would appear as though these dividends would be fully deductible."

We believe the fact that TCC-SARL is not an 80/20 company, is a member of the Illinois unitary group, this would make the dividend paid NOT a foreign dividend and not qualifying for the foreign dividend subtraction modification.

A second argument made by this auditor is the fact that this is a double deduction, not allowed by Illinois statute IITA203(g). TCC-SARL files an 1120-F that shows zero income because all income for the company was deducted as a dividend paid to Target Capital Corp. The taxpayer is then taking this same dividend as a subtraction modification. The taxpayer does not agree that this is a double deduction.

Apportionment Adjustment for TR-LLC Sales and Target Bank Numerator

This auditor relied (in part) on the previous cycle technical request (TR# IT-394) as nothing has changed in how the entities involved do business or the location of the customers. The conclusion from the technical department was regardless of state statutes, which govern a state's apportionment of income, that income cannot be taxed unless the entity to be taxed has nexus with the state according to U. S. Constitutional jurisprudence. However, physical presence is not required to satisfy the "substantial nexus" requirement of the Commerce Clause.

We conclude the taxpayer has nexus through their agents TNB and Target Corp and TCC-SARL everywhere and Illinois sales (flowing through from Target Receivables LLC) should be included in the apportionment. The following, in part, was given the taxpayer in response to their arguments:

In the course of this audit, I have established the following facts:

- Target National Bank (TNB), a 100% owned subsidiary of Target Corporation (Target Corp), facilitates the loans to Illinois customers. This is primarily through the joint marketing efforts

of TNB and Target Corp to encourage Target Corp's Illinois retail customers to apply for, and use, credit cards issued by TNB.

- TNB determines the credit worthiness of TCC-SARL Illinois customers and determines the credit limit.
- TNB issued the credit cards to TCC-SARL Illinois customers
- TCC-SARL, a related party, a 100% owned subsidiary of Target Capital Corp which is a 100% owned subsidiary of Target Corp, purchases those receivables from TNB.
- TNB serviced the receivables and this includes invoicing, billing, and collecting delinquent accounts of TCC-SARL's Illinois customers.
- Target customers applied for TNB credit cards at Target stores located in Illinois.
- Target Corp. provided locations in Illinois where TCC-SARLs customers could use TBN Credit Cards in order for TCC-SARL to make the loans to their various Illinois customers.
- SARLs Illinois customers made payments on their credit card accounts to TNB at Target Corp's stores located in Illinois.
- Customers picked up and/or filled out credit card applications at any Target store
- From the prospective of TCC-SARL, the company's operations were assisted by TBN and Target Corp in Illinois in many ways.

Given the above facts, both TNB and Target Corp are direct agents of TCC-SARL.

Target is not disputing that TNB has Illinois nexus through their agent, Target Corp. Target is disputing that TCC-SARL has nexus, whether through their agent TNB or Target Corp.

We are basing our results on current facts as well as the findings of the prior audit cycle with the same conclusion.

A same or similar argument holds for Target Bank sales as TCC-SARL (TR-LLC sales) so no additional discussion is included on this.

We suggest TNB should apply to the (Illinois) Informal Conference Board to dispute the issue further or the Board of Appeals.

AUDITORS CONCLUSION

The taxpayer was cooperative throughout the conduct of the audit and provided all the information requested.

In the cover memo included with the work papers, we gave the taxpayer the option to discuss the audit results or any audit issues with our supervisor.

Our audit results are as follows:

YE1/12 Tax increase of $5,662,913
YE1/13 Tax increase of $6,233,006

In addition we assessed a penalty of $849,437 for 1/12 and $934,951 for 1/13 for underpayment of tax paid when due Ref: UPIA 3-3(b-20)(2). Interest of $930,652 for 1/12 and $892,171 for 1/13 (through 3/15/18, 30 days beyond the final EDA25 issue date) was also added for a total liability of $15,503,130.

The EDA25s were issued on 2/15/18 and was not signed or paid by the time the audit was submitted for review on 3/21/18. Please note that failure to pay within' the 30 day grace period has subjected the taxpayer to increased penalties.

The main driver of the tax assessment is including the income and factors for an entity the taxpayer treated as on 80/20 company.

Fran Pelikan c/o Michael Pasquarello
Revenue Auditor III

3/21/18
Date

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