IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

TARGET NATIONAL BANK	)
now known as,	)
TARGET ENTERPRISE, INC.	)
	)
Petitioner,	)
	)
v.	)
	)
THE ILLINOIS DEPARTMENT OF REVENUE,	)
	)
Defendant.	)

RECEIVED
AUG 02 2018
BY:

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NOTICE OF FILING

TO: James R. Reynolds
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601
James.R.Reynolds@Illinos.gov

PLEASE TAKE NOTICE that on the 2nd day of August, 2018, we filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, IL 60601, **Target National Bank's, now known as Target Enterprise, Inc., Verified Petition**, a copy of which accompanies this notice and is served on you herewith.

TARGET NATIONAL BANK., now known as TARGET ENTERPRISE, INC.,

Petitioner

By: ______________________________
One of Petitioner's Attorneys

Fred O. Marcus (fmarcus@hmblaw.com)
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500 W. Madison Street, Suite 3700
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IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

TARGET NATIONAL BANK now known as TARGET ENTERPRISE, INC. Petitioner, v. THE ILLINOIS DEPARTMENT OF REVENUE, Defendant.	)))))))))))	RECEIVED AUG 02 2018 BY: 18 TT 87

VERIFIED PETITION

Target Enterprise, Inc., as successor in interest to Target National Bank, (hereafter referred to individually as "Petitioner" and Target National Bank hereinafter referred to as "TNB"), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue ("Department"), and alleges 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 53rd Street, Sioux Falls, SD 57106.

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.

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. Mr. Lutz can be reached by phone at 312-606-3237 or by e-mail at clutz@hmblaw.com.

4. TNB's FEIN was 41-1721813.

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

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.

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.

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.

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.

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.

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").

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).

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.

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.

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.

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).

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).

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."

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[.]"

FACTS

A. Target Corporation's Activities

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

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

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").

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.

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

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.

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

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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).

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).

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.

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.

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.

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

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

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

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.

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.

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

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.

COUNT I

Petitioner was entitled to deduct dividends paid by TCC-Sarl under 35 ILCS 5/203(b)(2)(O)

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

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.

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).

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

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.

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)(O). Its Notice should therefore be rejected.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

a) finds and declares that the Petitioner is entitled to subtract from its combined Illinois base income subject to apportionment dividends deemed received from TCC-Sarl;

b) finds and declares that the Petitioner properly excluded the dividends deemed received from TCC-Sarl from its Illinois apportionment factor;

c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notices relating to Defendant's adjustment to Petitioner's subtraction of the dividends received from TCC-Sarl; and

d) grants such further relief as the Tribunal deems appropriate under the circumstances.

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.

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

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.

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.").

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

a) finds and declares that TCC Sarl properly reported no federal taxable income on its Federal Forms 1120 for the Years in Issue;

b) finds and declares that the Petitioner properly excluded the dividends deemed received from TCC-Sarl from its Illinois apportionment factor;

c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notices relating to Defendant's adjustment to Petitioner's subtraction of the dividends received from TCC-Sarl; and

d) grants such further relief as the Tribunal deems appropriate under the circumstances.

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

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).

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).

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

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,.

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

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

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

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

a) finds and declares that there is no double deduction;

b) finds and declares that the Petitioner is entitled to subtract from its taxable base income dividends received from TCC-Sarl;

c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notices relating to Defendant's adjustment to Petitioner's subtraction of the dividends received from TCC-Sarl; and

d) grants such further relief as the Tribunal deems appropriate under the circumstances.

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.

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, renumerations, 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.

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.

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).

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.

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

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

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

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

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.

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

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

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.

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 881(a)(1) 30% withholding tax.

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

96. Because the deposited into the trust accounts is not subject to the 26 USC 881(a)(1) 30% withholding tax, the interest income earned on the credit card receivables was properly excluded from TNB's Illinois taxable income.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

a) finds and declares that Petitioner's Illinois income accurately reflected Petitioner's Federal income because Petitioner was not required to withhold any tax on the interest amounts deposited into the Trust Accounts;

b) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notices relating to Defendant's adjustment to Petitioner's subtraction of the dividends received from TCC-Sarl; and

a) grants such further relief as the Tribunal deems appropriate under the circumstances.

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.

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.

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.

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.

101. As a result of these increases, Petitioner's apportionment factor rose 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.

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).

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

105. TCC is not an "Illinois customer."

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.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

a. finds and declares that the apportionment factor Petitioner reported on its original combined Illinois return was correct;

b. enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notices relating to Defendant's adjustment to Petitioner's subtraction of the dividends received from TCC-Sarl; and

c. grants such further relief as the Tribunal deems appropriate under the circumstances.

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.

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 it its business income from all sources. 35 ILCS 5/304(c)(1).

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.

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.

111. TCC has no connection with Illinois.

112. TCC was a Minnesota corporation.

113. TCC did not maintain any offices in Illinois.

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

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

116. TCC did not perform any services in Illinois.

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

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

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

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

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).

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

a) finds and declares that TCC did not have substantial nexus with Illinois;

b) finds and declares that TCC is not subject to Illinois' taxing jurisdiction;

c) requires the Department to adjust its notices to reflect no receipts earned by TCC in Petitioner's Illinois apportionment factor.

Respectfully Submitted,

TARGET ENTERPRISE, INC., as successor in interest to Target National Bank

Petitioner

By:_ __________________________
One of Petitioner's Attorneys

Fred O. Marcus (fmarcus@hmblaw.com)
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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Petition are true, accurate and correct.

By: Jennifer Romans
Name: Jennifer Romans
Its: Sr. Director, Tax

Subscribed and Sworn to before me
this 31 day of July, 2018.

Phyllis Mascio
Notary Public

OFFICIAL SEAL
PHYLLIS MASCIO
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:07/13/20

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing Verified Petition to be served upon Defendant by messenger delivery before the hour of 5:00p.m. on the 2nd day of August, 2018, addressed as follows:

James R. Reynolds
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601
James.R.Reynolds@Illinos.gov

4145810/7/02678.008

Notice of Deficiency

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

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

#BWNKMGV
#CNXX XX51 9321 5520#
TARGET NATIONAL BANK
TARGET NATIONAL BANK & AFFLILATES
ATTN: INCOME TAX DEPARTMENT
33 SOUTH 6TH STREET CC-1029
MINNEAPOLIS MN 55402

RECEIVED
JUN 11 2018

June 5, 2018

Letter ID: CNXXXX5193215520

Taxpayer ID:	41-1721813
Audit ID:	A1381519360
Reporting period:	January 2012
Total Deficiency:	$7,777,037.04
Balance due:	$7,777,037.04

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue", write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than $15,000, or if no tax deficiency is assessed, but the total penalties and interest is more than $15,000,** file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases,** file a protest with us, the Illinois Department of Revenue, within **60 days** of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at **tax.illinois.gov**). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case,** you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at **tax.illinois.gov**), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due which, may include levy of your wages and bank accounts, filing of a tax lien, *or* other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

Constance Beard

Constance Beard
Director

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

(217) 524-5292

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns. For those under the bankruptcy protection, this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

Statement

Date: June 5, 2018
Name: TARGET NATIONAL BANK
Taxpayer ID: 41-1721813
Letter ID: CNXXXX5193215520

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

Computation of deficiency	**Reporting period: 31-Jan-2012**
Income or loss	
Federal taxable income	$1,010,615,580.00
Net operating loss deduction	$0.00
State Municipal and other interest excluded	$10,592.00
Illinois bonus depreciation addition	$206,092.00
Other additions	$0.00
Base income or loss	
Foreign dividends subtraction	$2,980,262.00
Illinois bonus depreciation subtraction	$295,798.00
Other subtractions	$13,637.00
Total subtractions	$3,289,697.00
Base income or net loss	$1,007,542,567.00
Income allocable to Illinois	
Non-business income or loss	$0.00
Non-unitary partnership bus. income or loss	$0.00
Business income or loss	$1,007,542,567.00
Apportionment formula	
Total sales everywhere	$1,868,232,461.00
Total Illinois sales	$114,080,792.00
Apportionment factor	0.061063
Business income/loss apportionable to IL	$61,523,572.00
Nonbusiness income/loss allocable to IL	$0.00
Non-unitary part. business income app. to IL	$0.00
Base income or net loss allocable to IL	$61,523,572.00
Net income	
Base income or net loss	$61,523,572.00
IL net loss deduction (NLD)	$0.00
Net income	$61,523,572.00
Net replacement tax	
Replacement tax	$1,538,089.00
Recapture of investment credits	$0.00
Replacement tax before credits	$1,538,089.00
Replacement tax investment credits	$0.00
Net replacement tax	$1,538,089.00
Net income tax	
Income tax	$4,306,650.00

Statement

Date: June 5, 2018
Name: TARGET NATIONAL BANK
Taxpayer ID: 41-1721813
Letter ID: CNXXXX5193215520

Computation of deficiency	Reporting period: 31-Jan-2012
Recapture of investment credits	$0.00
Income tax before credits	$4,306,650.00
Income tax investment credits	$0.00
Net income tax	$4,306,650.00
Refund or balance due	
Net replacement tax	$1,538,089.00
Net income tax	$4,306,650.00
Total net income and replacement tax due	$5,844,739.00
Minus tax previously assessed	-$181,826.00
Total tax deficiency	$5,662,913.00
UPIA-5 late-payment penalty (Audit)	$1,132,582.60
Plus interest on tax through June 5, 2018	$981,541.44
Total deficiency	* $7,777,037.04

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

Computation of balance due	Reporting period: 31-Jan-2012
Balance due	* $7,777,037.04

Explanation of Audit Adjustments

Income Tax

STATE OF Illinois DEPARTMENT OF REVENUE tax.illinois.gov

#BWNKMGV
#CNXX XX37 7362 8642#
TARGET NATIONAL BANK
TARGET NATIONAL BANK & AFFLILATES
ATTN: INCOME TAX DEPARTMENT
33 SOUTH 6TH STREET CC-1029
MINNEAPOLIS MN 55402

June 5, 2018

Letter ID: CNXXXX3773628642

Taxpayer ID:	41-1721813
Account ID:	04301-44928
Audit ID:	A1381519360
Reporting period:	January 2012

Explanation of adjustments for tax period ending 01/31/2012	Return Impact	Tax impact
We adjusted your subtraction modifications for foreign dividends on Schedule J, Foreign Dividends, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203(b)(2)(G), (b)(2)(O), (h)]	-$974,857,505.00	$5,655,134.00
We adjusted your subtraction modifications to reflect the correct amount of Illinois depreciation related to bonus depreciation, assets, and the reversal of the bonus depreciation addback for an asset in the last year you are allowed a federal depreciation deduction for that asset, as required to be shown on Form IL-4562. [35 ILCS 5/203(b)(2)(T), (c)(2)(R), (d)(2)(O)]	-$189,797.00	$1,101.00
We adjusted your subtraction modifications to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203(h)]	$13,637.00	-$79.00
We adjusted the sales factor to include in the numerator receipts (other than receipts from sales of tangible personal property) which are allocable to Illinois. [5 ILCS 304(a)(3)(C-5)]	$94,509,531.00	$0.00
We adjusted your sales factor to include all business receipts on federal 1120, Lines 1 through 10, to the extent not expressly excluded from the sales factor. [86 IL Adm. Code 100.3370(a)(1)]	$1,535,814,474.00	$0.00

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

We are imposing a penalty because you did not pay the amount required to be shown due on your return by the due date for payment. Once an audit has been initiated, the late payment penalty is assessed at 15 percent of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on Form IL-870, Waiver of Restrictions, has resulted in this penalty increasing to 20 percent. [35 ILCS 735/3-3(b-20)(2)]

Notice of Deficiency

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

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

#BWNKMGV
#CNXX X2X4 1321 8X82#
TARGET NATIONAL BANK
TARGET NATIONAL BANK & AFFLILATES
ATTN: INCOME TAX DEPARTMENT
33 SOUTH 6TH STREET CC-1029
MINNEAPOLIS MN 55402

RECEIVED
JUN 11 2018

June 5, 2018

Letter ID: CNXXX2X413218X82

Taxpayer ID:	41-1721813
Audit ID:	A1381519360
Reporting period:	January 2013
Total Deficiency:	$8,427,790.72
Balance due:	$8,427,790.72

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue", write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

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- **In all other cases,** file a protest with us, the Illinois Department of Revenue, within **60 days** of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at **tax.illinois.gov**). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
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If you have questions, call us at the telephone number shown below.

Sincerely,

Constance Beard

Constance Beard
Director

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

(217) 524-5292

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- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

Statement

Date: June 5, 2018
Name: TARGET NATIONAL BANK
Taxpayer ID: 41-1721813
Letter ID: CNXXX2X413218X82

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

Computation of deficiency	**Reporting period: 31-Jan-2013**
Income or loss	
Federal taxable income	$1,103,723,728.00
Net operating loss deduction	$0.00
State Municipal and other interest excluded	$3,899.00
Income tax and replacement tax deduction	$422,052.00
Illinois bonus depreciation addition	$323,894.00
Other additions	$0.00
Base income or loss	
Foreign dividends subtraction	$2,866,316.00
Illinois bonus depreciation subtraction	$310,062.00
Total subtractions	$3,176,378.00
Base income or net loss	$1,101,297,195.00
Income allocable to Illinois	
Non-business income or loss	$0.00
Non-unitary partnership bus. income or loss	$0.00
Business income or loss	$1,101,297,195.00
Apportionment formula	
Total sales everywhere	$1,796,361,895.00
Total Illinois sales	$111,453,751.00
Apportionment factor	0.062044
Business income/loss apportionable to IL	$68,328,883.00
Nonbusiness income/loss allocable to IL	$0.00
Non-unitary part. business income app. to IL	$0.00
Base income or net loss allocable to IL	$68,328,883.00
Net income	
Base income or net loss	$68,328,883.00
IL net loss deduction (NLD)	$0.00
Net income	$68,328,883.00
Net replacement tax	
Replacement tax	$1,708,222.00
Recapture of investment credits	$0.00
Replacement tax before credits	$1,708,222.00
Replacement tax investment credits	$0.00
Net replacement tax	$1,708,222.00
Net income tax	
Income tax	$4,783,022.00

Statement

Date: June 5, 2018
Name: TARGET NATIONAL BANK
Taxpayer ID: 41-1721813
Letter ID: CNXXX2X413218X82

Computation of deficiency	**Reporting period: 31-Jan-2013**
Recapture of investment credits	$0.00
Income tax before credits	$4,783,022.00
Income tax investment credits	$0.00
Net income tax	$4,783,022.00
Refund or balance due	
Net replacement tax	$1,708,222.00
Net income tax	$4,783,022.00
Total net income and replacement tax due	$6,491,244.00
Minus tax previously assessed	-$258,238.00
Total tax deficiency	$6,233,006.00
UPIA-5 late-payment penalty (Audit)	$1,246,601.20
Plus interest on tax through June 5, 2018	$948,183.52
Total deficiency	* $8,427,790.72

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

Computation of balance due	**Reporting period: 31-Jan-2013**
Balance due	* $8,427,790.72

Explanation of Audit Adjustments

Income Tax

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

#BWNKMGV
#CNXX X15X 9414 4489#
TARGET NATIONAL BANK
TARGET NATIONAL BANK & AFFLILATES
ATTN: INCOME TAX DEPARTMENT
33 SOUTH 6TH STREET CC-1029
MINNEAPOLIS MN 55402

June 5, 2018

Letter ID: CNXXX15X94144489

Taxpayer ID: 41-1721813
Account ID: 04301-44928
Audit ID: A1381519360
Reporting period: January 2013

Explanation of adjustments for tax period ending 01/31/2013	Return Impact	Tax impact
We adjusted your subtraction modifications for foreign dividends on Schedule J, Foreign Dividends, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203(b)(2)(G), (b)(2)(O), (h)]	-$1,054,700,000.00	$6,216,592.00
We adjusted your subtraction modifications to reflect the correct amount of Illinois depreciation related to bonus depreciation, assets, and the reversal of the bonus depreciation addback for an asset in the last year you are allowed a federal depreciation deduction for that asset, as required to be shown on Form IL-4562. [35 ILCS 5/203(b)(2)(T), (c)(2)(R), (d)(2)(O)]	$55,259.00	-$326.00
We adjusted the sales factor to include in the numerator receipts (other than receipts from sales of tangible personal property) which are allocable to Illinois. [5 ILCS 304(a)(3)(C-5)]	$92,937,103.00	$0.00
We adjusted your sales factor to include all business receipts on federal 1120, Lines 1 through 10, to the extent not expressly excluded from the sales factor. [86 IL Adm. Code 100.3370(a)(1)]	$1,478,571,792.00	$0.00

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

We are imposing a penalty because you did not pay the amount required to be shown due on your return by the due date for payment. Once an audit has been initiated, the late payment penalty is assessed at 15 percent of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on Form IL-870, Waiver of Restrictions, has resulted in this penalty increasing to 20 percent. [35 ILCS 735/3-3(b-20)(2)]