



Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
James R. Thompson Center
100 West Randolph Street, Level 7-900
Chicago, Illinois 60601
(312) 814-6114

EXXONMOBIL CORP. & AFFILIATES,	)	Docket No.	14-IT-014
Taxpayers	)	TYE:	12/89 — 12/91
v.)		
THE DEPARTMENT OF REVENUE	)	John E. White,	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

NOTICE OF DISPOSITION

To:

Marilyn Wethekam, Breen Schiller
Horwood Marcus & Berk, Chartered
500 West Madison Street Suite 3700
Chicago, Illinois 60661

Rebecca Kulekowskis, Gary Heald
Illinois Department of Revenue
100 West Randolph Level 7-900
Chicago, Illinois 60601

YOU ARE HEREBY NOTIFIED that the attached Order of the Administrative Law Judge transferring the above captioned matter to the Illinois Independent Tax Tribunal has been approved by the Director of Revenue. By such Order, all proceedings before the Administrative Hearings Division of the Illinois Department of Revenue relative to this cause have been concluded.

Date: _____

Brian A. Hamer, Director
Illinois Department of Revenue

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

EXXONMOBIL CORP. & AFFILIATES,	)	Docket No.	14-IT-014
Taxpayers	)	TYE:	12/89 – 12/91
v.)		
THE DEPARTMENT OF REVENUE	)	John E. White,	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

ORDER

This matter coming on to be heard following notice of Taxpayer's Motion to Transfer Matter to Illinois Tax Tribunal (Taxpayer's Motion), filed on January 22, 2014, and the Administrative Law Judge being advised or taking of the following facts:

1. Taxpayer's Motion seeks to make a statutory election to transfer jurisdiction of this matter from the Department of Revenue to the Tribunal.

IT IS HEREBY ORDERED THAT:

2. Taxpayer's Motion is granted.
3. Taxpayer's election to transfer jurisdiction to the Tribunal is irrevocable.
4. The administrative hearing record for this case will be transferred to the Tribunal.
5. Taxpayer will be required to perfect its protest before the Tribunal, in accordance with 35 ILCS 1010/1-1 *et seq.*
6. All further proceedings in this matter are cancelled and the proceedings before the Illinois Department of Revenue's Office of Administrative Hearings are closed.



January 24, 2014
Date

John E. White, Administrative Law Judge

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

JAN 22 2014

IDOR
ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
v.)
EXXONMOBIL CORPORATION &)
AFFILIATED COMPANIES)
)
TAXPAYER.)

Docket No.

NOTICE OF MOTION

TO: Brian Fliflet
Deputy General Counsel
Illinois Department Of Revenue
100 West Randolph Street, 7th Floor
Chicago, Illinois 60601

Administrative Clerk
Office of Administrative Hearings
Illinois Department of Revenue
James R. Thompson Center
100 West Randolph Street, 7-900
Chicago, Illinois 60601
Fax: 312-814-3109

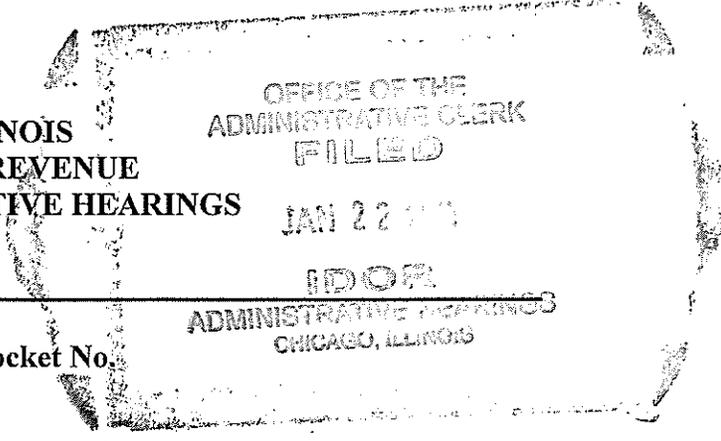
PLEASE TAKE NOTICE that on **Monday, January 27, 2014**, at **10:30 a.m.**, or as soon as possible thereafter, the undersigned will appear before John White, Administrative Law Judge, or another Administrative Law Judge designated in his stead, at 100 West Randolph Street, 7th Floor, Chicago, Illinois 60601, and then and there present **TAXPAYER'S MOTION TO TRANSFER MATTER TO ILLINOIS TAX TRIBUNAL** in the above-captioned matter.

Respectfully submitted,
**EXXONMOBIL CORPORATION &
AFFILIATED COMPANIES**
Taxpayer

By: Breen M. Schiller
One of Its Attorneys

Marilyn A. Wethekam
Breen Schiller
HORWOOD MARCUS & BERK CHARTERED
500 West Madison Street, Suite 3700
Chicago, Illinois 60661
(312) 606-3200

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS



THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
v.)
EXXONMOBIL CORPORATION &)
AFFILIATED COMPANIES)
)
TAXPAYER.)
)

Docket No.

TAXPAYER’S MOTION TO TRANSFER MATTER TO ILLINOIS TAX TRIBUNAL

Taxpayer, ExxonMobil Corporation & Affiliated Companies (“Taxpayer”), by its attorneys, Horwood Marcus & Berk Chartered, hereby moves the Illinois Department of Revenue’s (“Department”) Office of Administrative Hearings (“Administrative Hearings”) for an Order granting Taxpayer’s election to transfer the above-captioned matter to the Illinois Independent Tax Tribunal (“Tax Tribunal”). In support of this Motion, Taxpayer states as follows:

1. On December 20, 2013, Taxpayer filed a Protest and Request for Hearing with the Office of Administrative Hearings, a copy of which is attached as Exhibit A.
2. Taxpayer has not yet been assigned a docket number nor has it received notice of its initial status conference;
3. Pursuant to Section 1-15(d) of the Illinois Independent Tax Tribunal Act (“Tribunal Act”) codified at 35 ILCS §1010/1-15, Taxpayer may elect to transfer a matter pending before the Administrative Hearings, in which the aggregate amount deemed due and owing exceeds fifteen-thousand dollars, to the Tax Tribunal.

4. Pursuant to the Tribunal Act, a taxpayer's election must be made prior to February 1, 2014.
5. Pursuant to Section 1-15(d) and in accordance with the above-stated rules, Taxpayer hereby elects to transfer this pending matter to the Tax Tribunal for hearing. A copy of Taxpayer's petition to be filed with the Tax Tribunal is herein attached as Exhibit B.

WHEREFORE, for the reasons stated above, Taxpayer respectfully requests that the Administrative Hearings grant its election to transfer this matter to the Tax Tribunal.

**EXXONMOBIL CORPORATION &
AFFILIATED COMPANIES**



Attorney for Taxpayer

January 22, 2014
Date

Prepared by:

Attorney for Taxpayer
Breen M. Schiller
Horwood Marcus & Berk Chartered
500 W. Madison St., Ste. 3700
Chicago, IL 60661
(312) 606-3220

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that she caused a copy of the foregoing **TAXPAYER'S UNOPPOSED MOTION TO CONTINUE HEARING** to be served on other counsel of record by messenger delivery before the hour of 5:00 p.m. on the 22nd day of January, 2014, addressed as follows:

Administrative Clerk
Office of Administrative Hearings
Illinois Department of Revenue
James R. Thompson Center
100 West Randolph Street, 7-900
Chicago, Illinois 60601
Fax: 312-814-3109

and

Brian E. Fliflet
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St., 7-900
Chicago, IL 60601
Phone: (312) 814-0004
Fax: (312) 814-4344


Breen M. Schiller

HORWOOD MARCUS & BERK
Chartered

Marilyn A. Wethekam
Direct Dial: (312) 606-3240
Direct Fax: (312) 267-2220
Direct e-mail: mwetheka@hmbllaw.com

Attorneys at Law

500 West Madison Street
Suite 3700
Chicago, Illinois 60661

phone: (312) 606-3200
fax: (312) 606-3232

www.saltlawyers.com

December 20, 2013

PROTEST AND REQUEST FOR HEARING

**BY CERTIFIED MAIL (#7012 3050 0002 0095 9337)
RETURN RECEIPT REQUESTED**

Illinois Department of Revenue
Attn: JAR A1210178560
Notice Section
P.O. Box 19012
Springfield, Illinois 62794-9012

**Re: ExxonMobil Corporation & Affiliated Companies
FEIN: 13-5409005
Taxable Years Ending: 12/31/1989, 12/31/1990 & 12/31/1991**

Greetings:

The Taxpayer, ExxonMobil Corporation ("Exxon"), by and through its attorneys Horwood Marcus & Berk Chartered, hereby protests and takes exception to the Notice of Claim Denial ("Notice") issued by the Illinois Department of Revenue ("Department") on October 24, 2013 for the taxable years ending December 31, 1989 through December 31, 1991 ("Years at Issue"). In support of this Protest, Exxon states as follows:

I. Notice of Claim Denial

On October 24, 2013, the Department issued a Notice of Claim Denial for the Years at Issue denying Exxon's claims for refund of its Illinois corporate income tax overpayments in the following amounts:

- Denied in full \$165,993.00 for the taxable year ending December 31, 1989;
- Partially denied the overpayment of \$195,904 by \$188,789.00 for a net claim amount of \$7,115.00 for the taxable year ending December 31, 1990; and
- Denied in full \$12,825.00 for the taxable year ending December 31, 1991.

Illinois Department of Revenue
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A true and accurate copy of the Notice is attached hereto as Exhibit A. The total amount denied is \$367,607.00. In issuing the Notice, the Department took no issue with the amended returns filed by Exxon reflecting federal adjustments ("RAR Returns") for the Years at Issue; however, the Department used Exxon's filing of the RAR Returns as an opportunity to adjust the composition of Exxon's Unitary Group as filed on its original returns for the Years at Issue. Specifically, the returns for the Years at Issue were adjusted to include Exxon Overseas Investment Corporation ("EOIC") in Exxon's Illinois unitary group thereby offsetting Exxon's overpayments on account and reducing the amounts eligible for refund.

II. Hearing Requested

At this time, Exxon respectfully requests a formal administrative hearing on this Protest pursuant to the Department's regulation 86 Ill. Admin. Code §200.120. However, Exxon reserves the right to elect to transfer this protest to the Illinois Independent Tax Tribunal as soon as it is operational.

III. Facts

Exxon timely filed its amended returns for the Years at Issue reporting federal RAR adjustments resulting in a total refund request of \$374,723.00. The Department denied \$367,607.00 of Exxon's refund claim using the filing of Exxon's RAR Returns as an opportunity to adjust the composition of Exxon's Illinois unitary group for the Years at Issue, specifically to include EOIC. The inclusion of EOIC was unrelated to the federal RAR adjustments that were reported on Exxon's RAR Returns and the applicable statute of limitations for the Years at Issue had closed.

The Department argued that it may adjust a taxpayer's liability, at any time, and for any reason, in order to offset refund claims related to federal changes even when the adjustment does not relate to the federal change and the statute of limitation for assessment and collection has expired.

IV. Arguments

- a. **The language of Section 911(b) is clear. A refund is due and owing when federal changes reduce Illinois taxable income.**

35 ILCS 5/911(b) provides in pertinent part:

- (1) In general. In any case where notification of an alteration is required by Section 506 (b), a claim for refund may be filed within 2 years after the date on which such notification was due (regardless of whether such notice was given), but the amount recoverable pursuant to a claim filed under this Section

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shall be limited to the amount of any overpayment resulting under this Act from recomputation of the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported.

The Internal Revenue Service, for the Years at Issue, reduced the taxable income of Exxon. Thus, consistent with 35 ILCS 5/506(b), Exxon was required to file and did timely file a notification of a change in federal taxable income for the Years at Issue. The notification was filed in the form of an amended return Form IL1120X and requested a refund in the amount of \$374,222 for the 1989, 1990 and 1991 tax years respectively. The claim for refund was timely filed within 2 years after the date the notification was due.

Section 911(b)(1) specifically provides that the amount recoverable is limited to the amount of the overpayment that results from the recomputation of the taxpayer's net income after giving effect to the federal changes to taxable income. The Department has previously audited the Years at Issue and determined Exxon's taxable income. Copies of the Department's audit reports are attached as Exhibit B. Pursuant to the clear language of Section 911(b)(1) the only adjustment that now is statutorily authorized is an adjustment to Exxon's net income to reflect the federal adjustments to income.

The Department itself has interpreted Section 911(b)(1) consistent with the Exxon interpretation of the statutory provision. The Department has stated and an Administrative Law Judge has agreed that the application of section 911(b) is the following 4 step process:

ITA Section 911(b), when analyzed closely, requires the following four-step process:

1. identify the federal alteration required to be reported;
2. identify the item or items reflected in the alteration that impacts the taxpayer's Illinois tax liability;
3. recompute the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported (the "Recomputation of Illinois Tax"); and
4. limit the amount of any Illinois refund to the amount of the overpayment resulting from the recomputation of Illinois Tax. Administrative Hearing Decision IT 08-03 (March 12, 2008).

Applying the four step process to the issue at hand clearly supports the conclusion that a refund is due and owing to Exxon.

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Page 4

1. Exxon identified the changes to federal taxable income;
2. Exxon reflected the impact of those changes with respect to its net income as determined by the Department on audit;
3. Exxon recomputed its taxable income after incorporating the federal changes; and
4. The refund request and shown on the IL1120X was limited to the amount of the overpayment that resulted from the federal adjustments.

Therefore, consistent with the Department's own arguments the refund is due and owing.

The Appellate Court's decision in *Con-Way Transportation Servs., Inc. v. Hamer*, Docket No. 08L050477 (Ill. App. 1st Dist. 2013) further supports the conclusion that a refund is due and owing. The court in analyzing Section 911(b) concluded:

Section 911(b) next directs parties to "giv[e] effect to the item or items reflected in the alteration," though "the amount recoverable pursuant to a claim filed under this Section shall be limited to the amount of any overpayment resulting under this Act from recomputation of the taxpayer's net income." 35 ILCS 5/911 (b) (West 2008). That is to say, to give effect to the items reflected in the alteration, the new federal taxable income figure must be applied to the existing Illinois return to determine any change in the taxpayer's net income for the taxable year. If there is any change in net income, the question becomes whether such change results in an overpayment. If it does, the taxpayer is entitled to a refund.

Exxon applied the federal changes to the existing Illinois return as determined on audit by the Department and computed the tax effect of those changes. Those changes resulted in an overpayment. As stated by the Appellate Court if the changes result in an overpayment the taxpayer is entitled to a refund.

b. There is no statutory authority allowing the Department to conduct a second audit of Taxpayer after completing an audit of the same tax years.

The Department's position is that it may have two bites of the apple. However, that position is without statutory or regulatory merit. The Department audited the books and records of Exxon for the Years at Issue. A Notice of Deficiency was issued and a timely protest was filed.¹ The matter was finally resolved by the Appellate Court. *Exxon Corporation v. Glen Bower, Director of Revenue*, 867 N.E. 115 (Ill. App. 2004), Petition for Leave to Appeal Denied

¹ Copies of the relevant documents are attached as Exhibit B.

Illinois Department of Revenue
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Page 5

823 N.E.2d 964 (2004) As a result of the audit, the Department determined Exxon's taxable income for the Years at Issue. That determination was upheld by the Appellate Court and the Department computed Exxon's final tax liability for the Years at Issue. The Department's computations are found in Exhibit C, attached. It is this final determination of taxable income that is the starting point for the adjustment resulting from the federal audit of the Years at Issue.

Further, pursuant to 35 ILCS §5/904(a), as soon as practicable after a return is filed, the Department is required to examine the return to determine the correct amount of tax. If the Department finds that the amount of tax shown on the return is less than the correct amount, the Department will issue a notice of deficiency to the taxpayer, which shall set forth the amount of tax and penalties proposed to be assessed. *Id.* If the Department finds that the tax paid is more than the correct amount, it will credit or refund the overpayment as provided by ILCS §5/909. *Id.* Here, the Department determined the correct amount of tax it deemed "due & owing" during the original audit of the Years at Issue as shown on the Department's own schedules. Exhibit C. The Department's inclusion of EOIC into Exxon's Illinois unitary group was completely unrelated to the RAR Returns filed. To allow the Department an opportunity to "re-audit" Exxon and bypass the statute of limitations for the Year at Issue is unequitable and leads to unjust results.

c. The Department's reliance on federal authority is misplaced.

The Department has relied on *Lewis v. Reynolds*, 284 U.S. 281 (1932) as the basis for its authority to adjust Exxon's Illinois unitary group for the Years at Issue thereby reducing Exxon's refund claim for the Years at Issue for which the statute of limitations had closed. In *Lewis*, the Supreme Court determined that the Internal Revenue Service ("IRS") could use a taxpayer's overpayment to offset tax deficiencies from the same tax year as the overpayment even though the statute of limitations barred the IRS from bringing a claim to collect those deficiencies. *See, Id.*, 284 U.S. at 283. The IRS discovered the tax deficiencies in an audit commenced as a result of the taxpayer's claim for overpayment. *See, Id.* at 282. However, the Department's reliance on *Lewis* is misplaced. The portion of *Lewis* holding that the IRS can use tax overpayments to offset tax deficiencies when collection of those deficiencies is barred by the statute of limitations has been superseded by statute. *See*, 26 U.S.C. § 6401 (defining the amount of the taxpayer's overpayment, and therefore the amount refundable under section 6402, as including "that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto")². *Gordon v. United States*, 2009 U.S. Dist. LEXIS 115352, 28-29 (S.D. N.Y. 2009).

² Please note, however, that *Lewis* is still good law in that a taxpayer who seeks a refund must show an overall overpayment for the tax year in question.

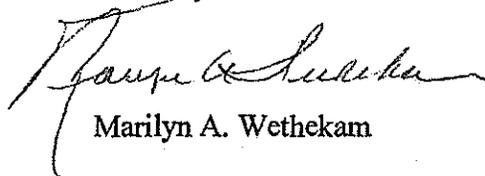
Illinois Department of Revenue
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Additionally, the Department alleges that the expired statute of limitations only precluded it from issuing a Notice of Deficiency with respect to adjustments unrelated to Exxon's RAR Returns. The Department argued that where a claim for refund is filed, the Department can make adjustments to reduce the refund against any liability regardless of whether the collection remedies are closed to the Department. The Department cited to both 35 ILCS §§5/904 and 5/909, in conjunction with *Lewis*, as its basis to apply the offset. However, the holding in *Lewis* is not as broad as the Department contends. See, *Gordon*, 2009 U.S. Dist. LEXIS 115352. Specifically, nothing in *Lewis* permits the IRS to use an overpayment to offset taxes that are not yet due. *Id.*, at 2009 U.S. Dist. LEXIS 115352 (S.D.N.Y. 2009). Here, the Department adjusted Exxon's Illinois unitary group to include EOIC thereby offsetting Exxon's overpayments on account and reducing the amounts eligible for refund. However, the Department previously audited the tax year and assessed the tax amounts it determined to be due. The Appellate Court affirmed that determination. The issuance of the Notices of Deficiency by the Department coupled with the Appellate Court's decision constituted the final liability for the Years at Issue. The subsequent adjustment to the Exxon unitary group to include EOIC does not give rise to a final liability that is due and owing as the final liability for the Years at Issue was previously determined by the Appellate Court when it upheld the Department's Notices of Deficiency.

V. Request for Relief

Based on the foregoing, Exxon respectfully requests that the Department withdraw its Notice for the Years at Issue and, based on the position stated in Part IV of this Protest and Request for Hearing, grant in full the refunds sought by Exxon in its returns. Exxon specifically reserves the right to amend this Protest at any time prior to the entry of a pre-trial order. A Power of Attorney authorizing our representation of Exxon is enclosed for your reference.

Sincerely,



Marilyn A. Wethekam

MAW/ko

Enclosure

cc: John H. Paraskevas (w/attachments)
Breen M. Schiller, Esq. (w/o attachments)



Illinois Department of Revenue
IL-2848 Power of Attorney

Read this information first

Attach a copy of this form to each specific tax return or item of correspondence for which you are requesting power of attorney.
Do not send this form separately.

Step 1: Complete the following taxpayer information

1 <u>Exxon Mobil Corporation</u> Taxpayer's name	3 <u>800 Bell Street, Corp-EMD-2647D</u> Taxpayer's street address
2 <u>13-5409005</u> Taxpayer's identification number(s)	<u>Houston TX 77002</u> City State ZIP

Step 2: Complete the following information

4 The taxpayer named above appoints the following to represent him before the Illinois Department of Revenue.

<u>Marilyn A. Wethekam</u> Name	<u>Breen M. Schiller</u> Name	_____ Name
<u>Horwood Marcus & Berk Chfd.</u> Name of firm	<u>Horwood Marcus & Berk Chfd.</u> Name of firm	_____ Name of firm
<u>500 W. Madison Street, Ste. 3700</u> Street address	<u>500 W. Madison Street, Ste. 3700</u> Street address	_____ Street address
<u>Chicago IL 60661</u> City State ZIP	<u>Chicago IL 60661</u> City State ZIP	_____ City State ZIP
<u>(312) 606-3240</u> Daytime phone number	<u>(312) 606-3220</u> Daytime phone number	_____ Daytime phone number
<u>mwethekam@hmbllaw.com</u> E-mail address	<u>bschiller@hmbllaw.com</u> E-mail address	_____ E-mail address
<u>Corp. income 1989-1991</u> Specific tax type Year or period	<u>Corp. income 1989-1991</u> Specific tax type Year or period	_____ Specific tax type Year or period

5 The attorneys-in-fact named above shall have, subject to revocation, full power and authority to perform any act that the principals can and may perform, including the authority to receive confidential information.

The attorneys-in-fact named above do not have the power to – *Check only the items below you do not wish to grant.*

- _____ endorse or collect checks in payment of refunds.
- _____ receive checks in payment of any refund of Illinois taxes, penalties, or interest.
- _____ execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- _____ execute consents extending the statutory period for assessments or collection of taxes.
- _____ delegate authority or substitute another representative.
- _____ file a protest to a proposed assessment.
- _____ execute offers in compromise or settlement of tax liability.
- _____ represent the taxpayer before the department in all proceedings including hearings (requiring representation by an attorney) pertaining to matters specified above.
- _____ obtain a private letter ruling on behalf of the taxpayer.
- _____ perform other acts (explain) _____

6 This power of attorney revokes all prior powers of attorney on file with the department with respect to the same matters and years or periods covered by this form, except for the following:

_____ Name	_____ Name	_____ Name
_____ Street address	_____ Street address	_____ Street address
_____ City State ZIP	_____ City State ZIP	_____ City State ZIP
_____ Daytime phone number	_____ Daytime phone number	_____ Daytime phone number
_____ Date granted	_____ Date granted	_____ Date granted



7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

Marilyn Wethekam

Name
500 W. Madison St., Ste. 3700
 Street address
Chicago IL 60661
 City State ZIP
(312) 606-3240
 Daytime phone number

Name
 Street address
 City State ZIP
 Daytime phone number

Name
 Street address
 City State ZIP
 Daytime phone number

Step 3: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

_____ Taxpayer's signature	_____ Title, if applicable	_____ Date
_____ Spouse's signature <i>NRG/PA</i>	_____ Title, if applicable <i>Vice President</i>	_____ Date <i>12/4/2013</i>
_____ If corporation or partnership, signature of officer or partner	_____ Title, if applicable	_____ Date

Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

I declare that I am not currently under suspension or disbarment and that I am
 e a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
 e duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
 e enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

_____ Attorney Designation (attorney, C.P.A., enrolled agent)	_____ Illinois Jurisdiction (state(s), etc.)	_____ <i>[Signature]</i> Signature	_____ <i>12/10/13</i> Date
_____ Attorney Designation (attorney, C.P.A., enrolled agent)	_____ Illinois Jurisdiction (state(s), etc.)	_____ <i>Breen M. Schuller</i> Signature	_____ <i>12/6/13</i> Date
_____ Designation (attorney, C.P.A., enrolled agent)	_____ Jurisdiction (state(s), etc.)	_____ Signature	_____ Date

Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following.

Any person signing as or for the taxpayer

_____ is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

_____ Signature of witness	_____ Date
_____ Signature of witness	_____ Date

_____ appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

_____ Signature of notary	_____ Date
------------------------------	---------------

Notary seal



Exhibit A



Illinois Department of Revenue

101 W. Jefferson St.
Springfield, IL 62702

(TS)

GEIS 75711

SOB/ENT
11/6/13

RECEIVED

NOV 05 2013

ExxonMobil Tax

TRAC - SHARED ADMIN TEAM

10/24/2013

FORM: IL-1120

TRACK NUMBER: A1210178560

FEIN: 13-5409005

TAXABLE YEARS ENDING

12/31/1989, 12/31/1990, 12/31/1991

AMOUNT DENIED

\$367,707.00

NOTICE OF DENIAL

EXXON MOBILE CORP & AFFILIATED COMPANIES
4500 DACOMA ST RM 205D
HOUSTON, TX 77092-8614

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim(s) for refund of income tax overpayment in the amount(s) of \$165,993.00 for the taxable year ending 12/31/1989, \$195,904.00 for taxable year ending 12/31/1990 and \$12,825.00 for taxable year 12/31/1991 filed on 03/01/2010 are denied to the extent shown above.

IF YOU DO NOT AGREE, Section 910(a) of the Act provides that the Department shall reconsider the denial if within 60 days of the date of this notice, the claimant or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the proposed denial of your claim, you may file a protest and, if desired, request a hearing. If an adequate and timely protest is not received, the denial of your claim to the extent shown above will become final as of the expiration of the aforementioned 60-day period pursuant to Section 909(f). A protest, if filed, should be forwarded to the address shown below.

Sincerely,

Brian Hamer

Director

Enclosures: EAR-14
IDR-867
Return Envelope

NOTICE SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD, IL 62794-9012
PHONE: 217 524-5292
ATTENTION: JAR A1210178560

STATEMENT

EXXON MOBILE CORP & AFFILIATED COMPANIES
4500 DACOMA ST RM 205D
HOUSTON, TX 77092-8614

TAXABLE YEARS ENDING
12/31/1989, 12/31/1990, 12/31/1991
TRACK NUMBER: A1210178560

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim for refund of income tax overpayment in the amount of \$165,993.00 for the taxable year ending 12/31/1989 and filed on 03/01/2010 is denied in full. The overpayment of \$195,905.00 for the taxable year ending 12/31/1990 and filed on 03/01/2010 is partially denied by \$188,789.00 for a net claim amount of \$7,115.00. The overpayment of \$12,825.00 for the taxable year ending 12/31/1991 and filed on 03/01/2010 is denied in full. The Department holds the tax as determined by the audit examination concluded on 04/18/2013 to be the correct liability for these years and thus finds a denial of overpayment to exist.

Taxpayers' 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 our notices by asking questions, paying the amount due, or providing proof to refute our findings.

You have the right to appeal our decisions in many instances within specified time periods by asking for our review or by taking the issue to court.

If you have overpaid your taxes, you have the right to 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. For more information about these rights and other departmental procedures, visit our Web site at www.tax.illinois.gov; call our Taxpayer Assistance Division at 1 800 732-8866, 217 782-3336, or call our TDD (telecommunications device for the deaf) at 1 800 544-5304. If you prefer you may write to us at PO Box 19044, Springfield, Illinois 62794-9044.



4 What adjustments or issues are being protested?

5 What facts are you relying on in making your protest?

6 What law(s) are you relying on in making your protest?

7 What documentation or attachments are being submitted with your protest?

8 Please provide any closing remarks you would like to make regarding this matter.

Note: If additional space is needed to answer any of these questions, you may attach additional sheets using the same format.

Step 3: Sign below

The taxpayer must provide a written signature certifying that the contents and facts stated are true, correct, and complete. If the protest is being prepared by a representative for the taxpayer, the preparer must also provide a written signature certifying the contents. In addition, the taxpayer's representative must have previously provided a Form IL-2848, Power of Attorney, or must submit one with the protest.

Execution and Certificate of Taxpayer(s) or Taxpayer's Representative

By Taxpayer(s):

Under penalties of perjury, I hereby certify and declare under the penalties of perjury that I have examined this protest and any attachments and that to the best of my knowledge the facts stated are true, correct and complete.

Taxpayer's signature

Date

Taxpayer's signature

Date

By Taxpayer's Representative:

Under penalties of perjury, I hereby certify and declare that I have prepared the protest and that to the best of my knowledge the facts stated herein and all attachments are true, correct and complete. A Power of Attorney (Form IL-2848) has been previously provided or is enclosed.

Taxpayer's representative's signature

Date

Taxpayer's representative's signature

Date

Taxpayer's representative's signature

Date

Step 4: Mail to Illinois Department of Revenue

Address and mail your written protest/request for hearing to us using the return address printed on the Notice of Deficiency or Notice of Claim Denial you are protesting. Be sure to use the complete address including any unit name and P.O. Box number.





Illinois Department of Revenue
 P.O. Box 19012
 Springfield, Illinois 62794-9012

THIS IS A LEGAL DOCUMENT
 Please open immediately and read carefully.

neopostSM FIRST-CLASS MAIL
 10/24/2013 AUTO
US POSTAGE \$000.38⁴



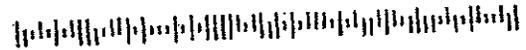
ZIP 62702
 041L1220316E

RECEIVED

NOV 05 2013

ExxonMobil Tax
 TRAC - Excise Tax Div.

5 JMGVN3B 77092



return address:



PLACE STAMP
 HERE
 POST OFFICE
 WILL NOT
 DELIVER
 WITHOUT PROPER
 POSTAGE

AUDIT PERFECTION SECTION
 IL DEPT OF REVENUE
 PO BOX 19012
 SPRINGFIELD IL 62794-9012



Exhibit B

ILLINOIS DEPARTMENT OF REVENUE

Audit Support Division
101 West Jefferson Street
Springfield, Illinois 62794

April 22, 1994

ADMINISTRATIVE HEARINGS

FORM IL-1120

FILED

FEIN: 13-5409005

NOTICE OF DEFICIENCY

FEB 03 1999

TAXABLE YEAR(S) ENDING:
12/31/90, 12/31/91

CHICAGO, ILLINOIS

STATUTORY DEFICIENCY:
\$1,161,781

Exxon Corp.
800 Bell St.
Houston, TX 77001

INTEREST TO DATE:
\$223,946

TOTAL AMOUNT DUE:
\$1,385,727

Pursuant to Section 904(c) of the Illinois Income Tax Act, notice is hereby given that the determination of your income tax liability for the above-noted taxable year(s) discloses a deficiency (or deficiencies) in the amount shown above. The attached statement contains explanations of the adjustments and shows the computation of the deficiency (or deficiencies).

IF YOU AGREE to this determination, please sign the enclosed agreement, WAIVER FORM IL-870, and return it promptly to this office in the enclosed addressed envelope. If the TOTAL AMOUNT DUE is paid within twenty-one (21) days of the date of this notice, no additional interest will accrue.

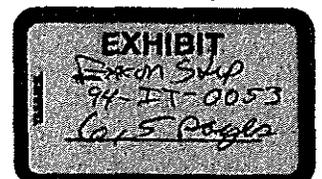
IF YOU DO NOT AGREE and do not sign and return the enclosed Form IL-870, Section 908(a) of the Act provides that the Department shall reconsider the proposed assessment if within 60 days of the date of this notice, the taxpayer or his authorized representative request a hearing (under Section 914). Thus, if you disagree with the assessment proposed, you may file a protest and, if desired, request a hearing. A protest, if filed, should be forwarded to the address shown below.

IF AN ADEQUATE AND TIMELY PROTEST is not received, the total amount of the deficiency shown will be deemed assessed as of the expiration of the aforementioned 60-day period pursuant to Section 903(a)(2) and 904(d). If the tax remains unpaid after a demand for payment, the Act permits, in addition to other remedies, the seizure and sale of real and personal property to enforce collection.

Very truly yours,
Raymond T. Wayne, Jr.
Director of Revenue¹⁶

Enclosures: IL-870
EAR-14, IDR-867
Return Envelope
Schedule of Interest Rates

Audit Support Division
Notice Section
Post Office Box 19012
Springfield, Illinois 62794-9012
Phone: (217) 782-5835
Attention: GO (19913A)



TAXPAYER: EXXON CORP FEIN: 13-5409005
 AUDIT PERIOD: 12/31/90 12/31/91
 First Day of Year: 1/1/90 Last Day of Yr: 12/31/90

UNITARY INCOME 1,302,332,746
 Exempt Interest Addition 46,515
 IT and/or RT Addition 0
 Other Additions: 0
 US Gov't Interest Subtraction 46,881,211
 Dividends (Sec 78, Sch J, Subpart F, Etc) Subtraction 746,797,801
 Other Subtractions: 0

Unitary Base Income 508,700,249
 Less: Nonbusiness Income 38,530,842
 Partnership Income 0

APPORTIONABLE BUSINESS INCOME 470,169,407

APPORTIONMENT	EVERYWHERE	ILLINOIS	FACTOR
Property Factor	42,065,173,190	432,022,846	0.010270
Payroll Factor	2,186,231,497	57,190,484	0.026159
Sales Factor	47,278,169,672	335,195,619	0.007090
Sales Factor	47,278,169,672	335,195,619	0.007090
Total Factors			0.050609
AVERAGE			0.012652

Illinois Business Income 5,948,583
 Add: Illinois Nonbusiness Income 0
 Illinois Partnership Income 0
 Illinois NOL Carryback or Carryover 0

Illinois Base Income 5,948,583
 Exemption and Illinois Net Income 12 5,948,571
 Net Income and IT Tax @ 4% 5,948,571 237,943
 Net Income and IT Tax @ .8% 5,948,571 47,589
 Add: Investment Tax Cr Recapture 0
 Less: IT Investment Cr 0
 RT Tax Paid Cr 83
 RT Tax Cr Carryforward 0
 Net Income Tax 285,449

Illinois Base Income - RT 5,948,583
 RT Addback 0 0
 IL Base w/Adbk 5,948,583
 Exemption and Net RT Income @ .25% 12 5,948,571
 RT Tax @ 2.5% 148,714
 Net Income and RT Tax @ .35% 0 0
 Add: ITC Recapture 0
 Less: RT Investment Cr 0
 Net RT Tax 148,714

Total Tax Per Audit 434,163
 Less previously Assessed 0
 Net Section 1001 penalty per audit 0
 Net Section 1002 penalty per audit 0
 Net Section 1005 penalty per audit 80,932
 Net Section 804 penalty per audit 0
 Total other penalty per audit 0
 STATUTORY DEFICIENCY 515,095

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TAXPAYER: EXXON CORP FEIN: 13-5409005
 AUDIT PERIOD: 12/31/90 12/31/91
 First Day of Year: 1/1/91 Last Day of Yr: 12/31/91

UNITARY INCOME 1,238,309,982
 Exempt Interest Addition 42,904
 IT and/or RT Addition 0
 Other Additions: 0
 US Gov't Interest Subtraction 46,946,940
 Dividends (Sec 78,Sch J,Subpart F,Etc) Subtraction 494,261,218
 Other Subtractions: 0

 Unitary Base Income 697,144,728
 Less: Nonbusiness Income 33,081,853
 Partnership Income 0

APPORTIONABLE BUSINESS INCOME 664,062,875

APPORTIONMENT	EVERYWHERE	ILLINOIS	FACTOR
Property Factor	43,190,113,793	451,591,007	0.010456
Payroll Factor	2,357,570,150	55,723,523	0.023636
Sales Factor	48,092,951,859	319,735,216	0.006648
Sales Factor	48,092,951,859	319,735,216	0.006648
Total Factors			0.047388
AVERAGE			0.011847

Illinois Business Income 7,867,153
 Add: Illinois Nonbusiness Income 0
 Illinois Partnership Income 0
 Illinois NOL Carryback or Carryover 0

Illinois Base Income 7,867,153
 Exemption and Illinois Net Income 11 7,867,142
 Net Income and IT Tax @ 4% 7,867,142 314,686
 Net Income and IT Tax @ .8% 7,867,142 62,937
 Add: Investment Tax Cr Recapture 0
 Less: IT Investment Cr 0
 RT Tax Paid Cr 107
 RT Tax Cr Carryforward 0
 Net Income Tax 377,516

Illinois Base Income - RT 7,867,153
 RT Addback 0 0
 IL Base w/Adbk 7,867,153
 Exemption and Net RT Income @ .25% 11 7,867,142
 RT Tax @ 2.5% 196,679
 Net Income and RT Tax @ .35% 0 0
 Add: ITC Recapture 0
 Less: RT Investment Cr 0
 Net RT Tax 196,679

Total Tax Per Audit 574,195
 Less previously Assessed 0
 Net Section 1001 penalty per audit 0
 Net Section 1002 penalty per audit 0
 Net Section 1005 penalty per audit 72,491
 Net Section 804 penalty per audit 0
 Total other penalty per audit 0
 STATUTORY DEFICIENCY 646,686

Taxpayer Name: EXXON CORP

FEIN:
13-5409005

Audit Periods: 12/31/90 12/31/91

	Adjustments	12/31/90	12/31/91
We adjusted your income by excluding income from the finance company and removing other non-unitary companies. Ref: IITA Sec 1501(a)(27).		-108,973,826	-57,207,090
We reduced your tax exempt interest by eliminating interest from company determined not to be unitary with oil & gas group. Specifically Friendswood Dev. Ref: IITA Sec 1501(a)(27).		-24,500	-23,750
We reduced your government interest subtraction by removing the interest of the non-unitary real estate company. Ref: IITA Sec 1501(a)(27).		-748,830	-643,978
We reduced your non-business income by removing income of companies determined not to be part of the unitary business group. Ref: IITA Sec. 1501(a)(27).	Everywhere	-1,686,736	-8,324,558
	Illinois		
We adjusted your business income and apportionment factors to include the income of partnerships that are unitary with your business operations. Ref: IAC Section 100.3380(c)	Everywhere	1,278,959,721	-947,192,390
	Illinois		
We adjusted your partnership receipts by excluding companies that were not determined to be part of the unitary business group. Ref: IITA Sec 101(a)(27).	Everywhere	-2,567,203	12,614
	Illinois		
We removed construction in progress from the property factor because the property was not available for use in the regular course of your business. Ref: IAC Section 100.3350(b)	Everywhere		
	Illinois	-109,655	-547,582
We adjusted property everywhere by excluding non-unitary companies and finance company and including property from unitary partnership operations. Ref: IITA Sec 1501(a)(27).	Everywhere	4,750,035,196	4,367,445,466
	Illinois		
We adjusted Illinois property by removing CIP for Exxon Coal USA which had erroneously been included. Ref: IAC Sec. 100.3350(b)	Everywhere		
	Illinois	347,582	428,077
We figured your Illinois payroll based on salaries and wages reported on the Illinois Unemployment Compensation Reports (Form IL-UC-3). Ref: IAC Section 100.3600.	Illinois	143,995	93,500
We reduced everywhere wages by excluding wages from finance company and non-unitary real estate companies. Ref: IITA Sec 1501(a)(27).	Everywhere	-12,404,591	-13,056,418
	Illinois		
We adjusted sales everywhere by removing non-unitary company and the finance company and including receipts from unitary partnership operations. Ref: IITA Sec 1501(a)(27).	Everywhere	1,663,455,000	1,195,224,615
	Illinois		
You owe a penalty because you did not pay your entire tax liability by the due date (without regard to extensions) of your return. Ref: IITA Sec. 1005.		80,932	72,491

Waiver of Restrictions on Assessment and Collection
of Deficiency in Tax and Acceptance of Overpayment

Pursuant to Section 907 of the Illinois Income Tax Act, the undersigned waives the restriction provided in Section 903(b) of the Act and consents to the immediate assessment and collection of the following deficiencies (increase in tax and penalty) with interest as provided by law and accepts the following overassessments (decrease in tax and penalty) as correct:

INCREASE IN TAX AND PENALTIES

Year Ended	Amount of Tax	Penalty	Interest	Total
12/31/90	434,163	80,932		515,095
12/31/91	574,195	72,491		646,686
				0

DECREASE IN TAX AND PENALTIES

Year Ended	Amount of Tax	Penalty	Interest	Total
				0
				0
				0

Remarks: SEC. 1005 (FAILURE TO TIMELY PAY) PENALTY HAS BEEN COMPUTED THOROUGH 4/22/94.

Mailing address of Taxpayer: EXXON CORP. 800 BELL ST. HOUSTON, TEXAS 77001 a	Illinois address, if different:
FEIN: 13-5409005	

This waiver must be signed with the corporate name followed by the signature and title of the officer(s) duly authorized to sign. This waiver may be signed by the taxpayer's attorney or agent provided his action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form. An executed IL-870 constitutes a notice and demand for purposes of Sections 3-2 and 3-3 of the Uniform Penalty and Interest Act. Therefore, if the amount shown due on the IL-870 is paid within twenty-one (21) days of the date of execution of the waiver, no additional interest will accrue. NOTE: The execution and filing of this waiver will expedite the adjustment of your tax liability. It is not a binding determination and does not preclude assertion of a further deficiency in the manner provided by law if it is later determined that additional tax is due; nor does it extend the statutory period of limitation for refund, assessment, or collection of tax. Furthermore, execution and filing of this waiver will not preclude the taxpayer's filing a timely claim for refund or credit under Section 909 of the Act. We will consider this waiver a valid claim for refund or credit of any overpayment due you resulting from any decrease in tax and penalties shown above, provided you sign and file it within the period established by law for making such a claim and you obtain a dated, receipted copy from the auditor accepting the Form IL-870. You may request separate Forms IL-870 to sign if some years involve decreases in tax but other years are increases in tax that are unagreed.

EXXON CORP.

By: _____ Title _____ Date _____
IL-870 (R-1/94)

ILLINOIS DEPARTMENT OF REVENUE
Audit Support Division
101 W. Jefferson St.
Springfield, IL 62794-9012

FEIN: 13-5409005

ADMINISTRATIVE HEARINGS
Form IL-1120

FILED

November 19, 1993

TAXABLE YEAR(S) ENDING:

FEB 03 1999 1/88 12/31/89

EXXON CORP
300 BELL ST.
HOUSTON, TX. 77001

NOTICE OF DEFICIENCY:
CHICAGO, ILLINOIS \$2,070,859

Pursuant to Section 904(c) of the Illinois Income Tax Act, notice is hereby given that the determination of your income tax liability for the above-noted taxable year(s) discloses a deficiency (or deficiencies) in the amount shown above. The attached statement contains explanations of the adjustments and shows the computation of the deficiency (or deficiencies).

IF YOU AGREE to this determination, please sign the enclosed agreement, WAIVER FORM IL-870, and return it promptly to this office in the enclosed addressed envelope. The signing and filing of this agreement will permit an early assessment of the deficiency (or deficiencies) and will limit the accumulation of interest.

IF YOU DO NOT AGREE and do not sign and return the enclosed form, Section 908(a) of the Act provides that the Department shall reconsider the proposed assessment if within 60 days of the date of this notice, the taxpayer files a written protest thereto setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the assessment proposed, you may file a protest and, if desired, request a hearing. A protest, if filed, should be forwarded to the address shown below.

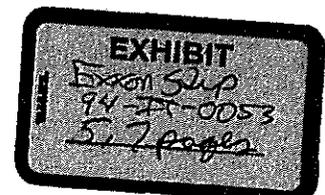
IF AN ADEQUATE AND TIMELY PROTEST is not received, the total amount of the deficiency shown will be deemed assessed as of the expiration of the aforementioned 60-day period pursuant to Sections 903(a)(2) and 904(d). If the tax remains unpaid after a demand for payment, the Act permits, in addition to other remedies, the seizure and sale of real and personal property to enforce collection.

Very truly yours,

Raymond T. Wagner, Jr.
Director of Revenue ¹⁶

Enclosures: IL-870
EAR-14
IDR-867
Return envelope
Schedule of Interest Rates

Audit Support Division
Post Office Box 19012
Springfield, Illinois 62794-9012
Phone: 217/782-5835
Attn: L.O. 06187A



EXPLANATION OF ADJUSTMENTS

Page 1

Taxpayer Name: EXXON CORP

FEIN:
13-5409005

Audit Period: 12/31/88 12/31/89

Adjustments	12/31/88	12/31/89
We adjusted your income to include income from members of the group as prescribed per IITA Sec 1501(a)(27); thus excluding the finance company, insurance, transportation, 80/20 companies.	-82,399,063	-83,617,603
In 1988 we included two domestic unitary companies that had erroneously been omitted per return as filed; Exxon Trading Int'l & Exxon Supply. Ref: IITA Sec 1501(a)(27).	90,523,908	
We disallowed your INLD from '86; Per previous Illinois audit, '86 year resulted in income, not a loss. Therefore, there is no available carryforward. Ref: IITA Sec 207.	-6,113,921	
We adjusted tax exempt interest by excluding interest from companies that were not included in the unitary business group. Ref: IITA Sec 1501(a)(27).	-27,229	
We changed your subtraction modification for interest income from U.S. government obligations by disallowing obligations from nonunitary companies. Ref: IITA Sec. 1501(a)(27).		-158,191
We corrected your subtraction modification for interest income on U.S. Treasury obligations not previously claimed. Ref: IITA Section 203(b)(2)(J).	6,090,000	
We reduced your non-business income by excluding items from companies that were determined to be in the real estate business and not unitary. Ref: IITA Sec 1501(a)(27).	Everywhere Illinois	-4,108,431 -2,320,666
We adjusted your business income and apportionment factors to include the income of partnerships that are unitary with your business operations. Ref: IAC Section 100.3700(d).	Everywhere Illinois	-1,110,677,737 -1,213,722,666
We adjusted partnership income as originally allocated by removing partnership income from non-unitary companies. Ref: IITA Sec 1501(a)(27).	Everywhere Illinois	-3,796,189 -3,041,632
We adjusted your property to include property of unitary partnership operations and exclude property of companies not part of the unitary group. Ref: IITA Sec 1501(a)(27).	Everywhere Illinois	3,734,239,137 4,490,571,888
We adjusted your Illinois property to include the property of Exxon Risk Management Co which was erroneously omitted per return as a member of the group. Ref: IITA Sec 1501.	Everywhere Illinois	61,034 61,034
We reduced payroll everywhere by removing wages from finance real estate companies and insurance. Also included Exxon Trading, a member that had been omitted. Ref: IITA Sec 1501	Everywhere Illinois	-6,357,076 -12,457,665
We increased Illinois payroll to include wages of Exxon Risk Management, a member of the unitary business group. Ref: IITA Sec 1501(a)(27).	Everywhere Illinois	87,700
We adjusted your receipts by including the receipts of Exxon Risk Management, a member of the unitary business group. Ref: IITA Sec 1501(a)(27).	Everywhere Illinois	40,129

EXPLANATION OF ADJUSTMENTS

Page 2

Taxpayer Name: EXXON CORP

FEIN:
13-5409005

Audit Period: 12/31/88 12/31/89

Adjustments	12/31/88	12/31/89
We adjusted sales everywhere to include receipts from unitar partnership operations and excluded receipts from non-unitary companies. Ref: IITA Sec 1501(a)(27).	855,151,863	1,097,430,544
Everywhere		
Illinois		
You owe a penalty because you did not pay your entire tax liability by the due date (without regard to extensions) of your return. Ref: IITA Sec. 1005.	406,298	35,055

11/10/93

UNITARY AUDIT RESULT INPUT FORM-PART II

Agnt Name: EXXON CORP

FEIN: 13-5409005

No. Membrs: 50

Page 1 of 1

Membr FEIN	Member Name	Member's APE's	Flr	Fld
13-5409005	EXXON CORP	12/88 12/89	Y	Y
13-6095234	EXXON COAL RESOURCES USA	12/88 12/89	Y	Y
74-2071835	EXXON COAL USA INC	12/88 12/89	Y	Y
74-2083056	MONTEREY COAL COMPANY	12/88 12/89	Y	Y
74-1497821	EXXON RESEARCH & ENGINEERING	12/88 12/89	Y	Y
22-1813717	ERE LIAISON	12/88 12/89	Y	Y
76-0006056	EXXON RISK MANAGEMENT	12/88 12/89	Y	Y
74-2083053	THE CARTER MINING COMPANY	12/88 12/89	N	N
74-2083057	THE CARTER OIL COMPANY	12/88 12/89	N	N
51-0256258	ENCO, INCORPORATED	12/88 12/89	N	N
13-6095241	THE ENERGY CORPORATION	12/88 12/89	N	N
51-0116777	ENJAY CHEMICAL CORPORATION	12/88 12/89	N	N
13-6044294	ENJAY INC	12/88 12/89	N	N
59-1226382	EXXON CHEMICAL INTRAMERICA	12/89	N	N
13-6044279	ESSO ENERGY INCORPORATED	12/88 12/89	N	N
13-6173629	ESSO EXPLORATION INC	12/88 12/89	N	N
13-6044275	ESSO STANDARD (INTERAMERICA)	12/88 12/89	N	N
51-0116558	EXTRUDO FILM COMPANY, INC	12/88 12/89	N	N
13-2958734	EXXON BIOMEDICAL SCIENCES	12/88 12/89	N	N
22-2219850	EXXON CAPITAL CORPORATION	12/88 12/89	N	N
13-3346708	EXXON CAPITAL HOLDING CORP	12/88 12/89	N	N
PENDING	EXXON CAPITAL INVESTMENT INC	12/88 12/89	N	N
13-2615549	EXXON CAPITAL VENTURES INC	12/88 12/89	N	N
41-1562869	EXXON CHEMICAL FERTILIZER CO	12/88 12/89	N	N
13-2625031	EXXON CHEMICAL SUPPLY	12/88 12/89	N	N
51-0110701	EXXON CHEMICAL TRADING INC	12/88 12/89	N	N
59-2525515	EXXON COAL AND MINERALS INTERNATIONAL	12/88 12/89	N	N
13-6095240	EXXON COMMUNICATIONS COMPANY	12/88 12/89	N	N
22-2715817	EXXON INSURANCE SERVICES	12/88 12/89	N	N
62-0973153	EXXON NUCLEAR DEVELOPMENT	12/88	N	N
82-0350059	EXXON NUCLEAR IDAHO	12/88	N	N
74-1497821	EXXON PRODUCTION & RESEARCH	12/88 12/89	N	N
74-1894483	EXXON COAL & MINERAL TRADING	12/89	N	N
72-0475223	EXXON SAN JOAQUIN PRODUCTION	12/88 12/89	N	N
59-1640476	EXXON SERVICES COMPANY	12/88 12/89	N	N
13-3409463	EXXON TECHNOLOGY HOLDING CORP	12/88 12/89	N	N
13-2621885	EXXON TRADING COMPANY INTL	12/88 12/89	N	N
74-1502305	EXXON TRAVEL CLUB, INC	12/88 12/89	N	N
22-2045188	EXXON VENTURES HOLDING INC	12/88 12/89	N	N
72-0997573	HUMBLE GAS SYSTEM INC	12/88 12/89	N	N
74-1671305	HUMBLE GAS TRANSMISSION	12/88 12/89	N	N
51-0116560	HUMBLE INCORPORATED	12/88 12/89	N	N
13-2618069	HUMBLE OIL AND REFINING	12/88 12/89	N	N
51-0116562	THE JERSEY COMPANY	12/88 12/89	N	N
91-0878400	JERSEY NUCLEAR-AVCO ISOTOPES, INC	12/88 12/89	N	N
74-1674239	MONTEREY PETROLEUM	12/88 12/89	N	N
13-6044285	STANDARD OIL COMPANY INC	12/88 12/89	N	N
76-0129879	W.A. MINES INC	12/88	N	N
59-1682353	COMPANIA ESSO	12/89	N	N
74-2533720	CAMELBACK CORP	12/89	N	N

TAXPAYER: EXXON CORP FEIN: 13-5409005
 AUDIT PERIOD: 12/31/88 12/31/89
 First Day of Year: 1/1/88 Last Day of Yr: 12/31/88

UNITARY INCOME 2,721,868,018
 Exempt Interest Addition 947,347
 IT and/or RT Addition 0
 Other Additions: 0
 US Gov't Interest Subtraction 45,958,540
 Dividends (Sec 78, Sch J, Subpart F, Etc) Subtraction 1,102,442,477
 Other Subtractions: 0

 Unitary Base Income 1,574,414,348
 Less: Nonbusiness Income 51,725,004
 Partnership Income 0

APPORTIONABLE BUSINESS INCOME 1,522,689,344

APPORTIONMENT	EVERYWHERE	ILLINOIS	FACTOR
Property Factor	38,321,381,721	420,716,994	0.010979
Payroll Factor	2,088,587,247	56,501,130	0.027052
Sales Factor	30,250,406,820	318,950,843	0.010544
Sales Factor	30,250,406,820	318,950,843	0.010544
Total Factors			0.059119
AVERAGE			0.014780

Illinois Business Income 22,505,349
 Add: Illinois Nonbusiness Income 0
 Illinois Partnership Income 0
 Illinois NOL Carryback or Carryover 0

Illinois Base Income 22,505,349
 Exemption and Illinois Net Income 14 22,505,335
 Net Income and IT Tax @ 4% 22,505,335 900,213
 Net Income and IT Tax @ .8% 0 0
 Add: Investment Tax Cr Recapture 0
 Less: IT Investment Cr 0
 RT Tax Paid Cr 333
 RT Tax Cr Carryforward 0
 Net Income Tax 899,880

Illinois Base Income - RT 22,505,349
 RT Addback 0 0
 IL Base w/Adbk 22,505,349
 Exemption and Net RT Income @ .25% 14 22,505,335
 RT Tax @ 2.5% 562,633
 Net Income and RT Tax @ .35% 0 0
 Add: ITC Recapture 0
 Less: RT Investment Cr 0
 Net RT Tax 562,633

Total Tax Per Audit 1,462,513
 Less previously Assessed 0
 Net Section 1001 penalty per audit 0
 Net Section 1002 penalty per audit 0
 Net Section 1005 penalty per audit 406,298
 Net Section 804 penalty per audit 0
 Total other penalty per audit 0
 STATUTORY DEFICIENCY 1,868,811

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TAXPAYER: EXXON CORP FEIN: 13-5409005
 AUDIT PERIOD: 12/31/88 12/31/89
 First Day of Year: 1/1/89 Last Day of Yr: 12/31/89

UNITARY INCOME 1,512,467,202
 Exempt Interest Addition 204,706
 IT and/or RT Addition 0
 Other Additions: 0
 US Gov't Interest Subtraction 47,652,824
 Dividends (Sec 78, Sch J, Subpart F, Etc) Subtraction 1,237,370,902
 Other Subtractions: 0

Unitary Base Income 227,648,182
 Less: Nonbusiness Income 61,456,491
 Partnership Income 0

APPORTIONABLE BUSINESS INCOME 166,191,691

APPORTIONMENT	EVERYWHERE	ILLINOIS	FACTOR
Property Factor	39,473,679,114	436,773,028	0.011065
Payroll Factor	2,045,791,592	55,853,087	0.027301
Sales Factor	36,175,295,424	353,038,461	0.009759
Sales Factor	36,175,295,424	353,038,461	0.009759
Total Factors			0.057884
AVERAGE			0.014471

Illinois Business Income 2,404,960
 Add: Illinois Nonbusiness Income 0
 Illinois Partnership Income 0
 Illinois NOL Carryback or Carryover 0

Illinois Base Income 2,404,960
 Exemption and Illinois Net Income 11 2,404,949
 Net Income and IT Tax @ 4% 2,404,949 96,198
 Net Income and IT Tax @ .8% 1,212,358 9,699
 Add: Investment Tax Cr Recapture 0
 Less: IT Investment Cr 0
 RT Tax Paid Cr 28
 RT Tax Cr Carryforward 0
 Net Income Tax 105,869

Illinois Base Income - RT 2,404,960
 RT Addback 0 0
 IL Base w/Adbk 2,404,960
 Exemption and Net RT Income @ .25% 11 2,404,949
 RT Tax @ 2.5% 60,124
 Net Income and RT Tax @ .35% 0 0
 Add: ITC Recapture 0
 Less: RT Investment Cr 0
 Net RT Tax 60,124

Total Tax Per Audit 165,993
 Less previously Assessed 0
 Net Section 1001 penalty per audit 0
 Net Section 1002 penalty per audit 0
 Net Section 1005 penalty per audit 36,055
 Net Section 804 penalty per audit 0
 Total other penalty per audit 0
 STATUTORY DEFICIENCY 202,048

=====

Waiver of Restrictions on Assessment and Collection
of Deficiency in Tax and Acceptance of Overpayment

Pursuant to Section 907 of the Illinois Income Tax Act, the undersigned waives the restriction provided in Section 903(b) of the Act and consents to the immediate assessment and collection of the following deficiencies (increase in tax and penalty) with interest as provided by law and accepts the following overassessments (decrease in tax and penalty) as correct:

INCREASE IN TAX AND PENALTIES

Year Ended	Amount of Tax	Penalty	Total
12/31/88	1,462,513	406,298	1,868,811
12/31/89	165,993	36,055	202,048

DECREASE IN TAX AND PENALTIES

Year Ended	Amount of Tax	Penalty	Total
12/31/88	0	0	0
12/31/89	0	0	0

Remarks: 1005 penalty is computed through 10/30/93 and will continue to accrue at a daily rate of \$240.41 and \$27.29 for years ending 12/31/88 and 12/31/89 respectively.

Mailing address of Taxpayer: | Illinois address, if different:

EXXON CORP
800 BELL ST.
HOUSTON, TX. 77001

FEIN: 13-5409005

This waiver must be signed with the corporate name followed by the signature and title of the officer(s) duly authorized to sign. This waiver may be signed by the taxpayer's attorney or agent provided his action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form. NOTE: The execution and filing of this waiver will expedite the adjustment of your tax liability. It is not a binding determination and does not preclude assertion of a further deficiency in the manner provided by law if it is later determined that additional tax is due; nor does it extend the statutory period of limitation for refund, assessment, or collection of tax. Furthermore, execution and filing of this waiver will not preclude the taxpayer's filing a timely claim for refund or credit under Section 909 of the Act. We will consider this waiver a valid claim for refund or credit of any overpayment due you resulting from any decrease in tax and penalties shown above, provided you sign and file it within the period established by law for making such a claim and you obtain a dated, receipted copy from the auditor accepting the Form IL-870. You may request separate Forms IL-870 to sign if some years involve decreases in tax but other years are increases in tax that are unagreed.

EXXON CORP

By: _____ Title _____ Date _____

Exhibit C

SECTION 1003 INTEREST COMPUTATION

Exxon Corporation

FEIN: 13-5409005

APE:12/31/1989

Computed through: 11/30/2004

Tax due per audit: 165,993
 Total payments/credits: 1,100

 Due before crdt/refnd: 164,893

	Amount of Payment	Interest Base Amt	Interest Start Dte	# of Days	Interest Due
Net due before credits/refunds	164,893	164,893	3/16/1990	5,374	191,140
Credit c/f amount	0	0			0
Amount(s) refunded	1,100	1,100	10/8/1990	5,168	1,219
Other amounts refunded	0	0			0

Total interest base amount		165,993			=====

TOTAL INTEREST DUE

 \$192,359
 =====

Interest has been computed through 11/30/2004
 and will accrue at a daily rate of \$18.19

INCOME TAX INTEREST COMPUTATION
 (Net due before credits/refunds)

TAXPAYER NAME:
 FEIN: 13-5409005

Exxon Corporation
 PERIOD ENDING: 12/31/1989

Interest from: 03/16/1990 No. of days: 5,374
 Interest through: 11/30/2004
 Deficiency: \$164,893.00

BEGIN	END	#DAYS	INTEREST	AMOUNT DUE	RATE
					6%
					9%
					7%
					6%
					12%
					20%
					16%
					11%
					13%
					11%
					10%
03/16/1990	12/31/1993	1,387	0.342000	56,393.41	9%
01/01/1994	06/30/1994	181	0.034712	5,723.82	7%
07/01/1994	12/31/1994	184	0.040329	6,649.93	8%
01/01/1995	06/30/1998	1,277	0.314877	51,920.97	9%
07/01/1998	12/31/1998	184	0.040329	6,649.93	8%
01/01/1999	06/30/1999	181	0.034712	5,723.82	7%
07/01/1999	06/30/2000	366	0.080219	13,227.58	8%
07/01/2000	06/30/2001	365	0.090000	14,840.37	9%
07/01/2001	12/31/2001	184	0.035288	5,818.69	7%
01/01/2002	12/31/2002	365	0.060000	9,893.58	6%
01/01/2003	06/30/2003	181	0.024795	4,088.44	5%
07/01/2003	12/31/2003	184	0.025205	4,156.21	5%
01/01/2004	06/30/2004	182	0.019945	3,288.82	4%
07/01/2004	11/30/2004	153	0.016767	2,764.78	4%

(No. of days) 5,374

INTEREST DUE \$191,140
 =====

INCOME TAX INTEREST COMPUTATION
(Amount(s) refunded)

TAXPAYER NAME:
FEIN: 13-5409005

Exxon Corporation
PERIOD ENDING: 12/31/1989

Interest from: 10/08/1990 No. of days: 5,168
Interest through: 11/30/2004
Deficiency: \$1,100.00

BEGIN	END	#DAYS	INTEREST	AMOUNT DUE	RATE
					6%
					9%
					7%
					6%
					12%
					20%
					16%
					11%
					13%
					11%
					10%
10/08/1990	12/31/1993	1,181	0.291205	320.33	9%
01/01/1994	06/30/1994	181	0.034712	38.18	7%
07/01/1994	12/31/1994	184	0.040329	44.36	8%
01/01/1995	06/30/1998	1,277	0.314877	346.36	9%
07/01/1998	12/31/1998	184	0.040329	44.36	8%
01/01/1999	06/30/1999	181	0.034712	38.18	7%
07/01/1999	06/30/2000	366	0.080219	88.24	8%
07/01/2000	06/30/2001	365	0.090000	99.00	9%
07/01/2001	12/31/2001	184	0.035288	38.82	7%
01/01/2002	12/31/2002	365	0.060000	66.00	6%
01/01/2003	06/30/2003	181	0.024795	27.27	5%
07/01/2003	12/31/2003	184	0.025205	27.73	5%
01/01/2004	06/30/2004	182	0.019945	21.94	4%
07/01/2004	11/30/2004	153	0.016767	18.44	4%

(No. of days) 5,168

INTEREST DUE

\$1,219
=====

SECTION 1003 INTEREST COMPUTATION

Exxon Corporation

FEIN: 13-5409005

APE:12/31/1990

Computed through: 11/30/2004

Tax due per audit: 434,163
 Total payments/credits: 0

 Due before crdt/refnd: 434,163

	Amount of Payment	Interest Base Amt	Interest Start Dte	# of Days	Interest Due
Net due before credits/refunds	434,163	434,163	3/16/1991	5,009	464,198
Credit c/f amount	0	0			0
Amount(s) refunded	0	0			0
Other amounts refunded	0	0			0

Total interest base amount		434,163			
		=====			

TOTAL INTEREST DUE

 \$464,198
 =====

Interest has been computed through 11/30/2004
 and will accrue at a daily rate of \$47.58

INCOME TAX INTEREST COMPUTATION
 (Net due before credits/refunds)

TAXPAYER NAME:
 FEIN: 13-5409005

Exxon Corporation
 PERIOD ENDING: 12/31/1990

Interest from: 03/16/1991 No. of days: 5,009
 Interest through: 11/30/2004

Deficiency: \$434,163.00

BEGIN	END	#DAYS	INTEREST	AMOUNT DUE	RATE
					6%
					9%
					7%
					6%
					12%
					20%
					16%
					11%
					13%
					11%
					10%
03/16/1991	12/31/1993	1,022	0.252000	109,409.08	9%
01/01/1994	06/30/1994	181	0.034712	15,070.81	7%
07/01/1994	12/31/1994	184	0.040329	17,509.26	8%
01/01/1995	06/30/1998	1,277	0.314877	136,707.82	9%
07/01/1998	12/31/1998	184	0.040329	17,509.26	8%
01/01/1999	06/30/1999	181	0.034712	15,070.81	7%
07/01/1999	06/30/2000	366	0.080219	34,828.20	8%
07/01/2000	06/30/2001	365	0.090000	39,074.67	9%
07/01/2001	12/31/2001	184	0.035288	15,320.60	7%
01/01/2002	12/31/2002	365	0.060000	26,049.78	6%
01/01/2003	06/30/2003	181	0.024795	10,764.86	5%
07/01/2003	12/31/2003	184	0.025205	10,943.29	5%
01/01/2004	06/30/2004	182	0.019945	8,659.47	4%
07/01/2004	11/30/2004	153	0.016767	7,279.66	4%

(No. of days) 5,009

INTEREST DUE

\$464,198

=====

SECTION 1003 INTEREST COMPUTATION

Exxon Corporation

FEIN: 13-5409005

APE:12/31/1991

Computed through: 11/30/2004

Tax due per audit: 574,195
 Total payments/credits: 0

 Due before crdt/refnd: 574,195

	Amount of Payment	Interest Base Amt	Interest Start Dte	# of Days	Interest Due
Net due before credits/refunds	574,195	574,195	3/16/1992	4,643	562,098
Credit c/f amount	0	0			0
Amount(s) refunded	0	0			0
Other amounts refunded	0	0			0

Total interest base amount		574,195			
		=====			

TOTAL INTEREST DUE

 \$562,098
 =====

Interest has been computed through 11/30/2004
 and will accrue at a daily rate of \$62.93

INCOME TAX INTEREST COMPUTATION
 (Net due before credits/refunds)

TAXPAYER NAME:
 FEIN: 13-5409005

Exxon Corporation
 PERIOD ENDING: 12/31/1991

Interest from: 03/16/1992 No. of days: 4,643
 Interest through: 11/30/2004
 Deficiency: \$574,195.00

BEGIN	END	#DAYS	INTEREST	AMOUNT DUE	RATE
					6%
					9%
					7%
					6%
					12%
					20%
					16%
					11%
					13%
					11%
					10%
03/16/1992	12/31/1993	656	0.161753	92,878.01	9%
01/01/1994	06/30/1994	181	0.034712	19,931.65	7%
07/01/1994	12/31/1994	184	0.040329	23,156.58	8%
01/01/1995	06/30/1998	1,277	0.314877	180,800.63	9%
07/01/1998	12/31/1998	184	0.040329	23,156.58	8%
01/01/1999	06/30/1999	181	0.034712	19,931.65	7%
07/01/1999	06/30/2000	366	0.080219	46,061.45	8%
07/01/2000	06/30/2001	365	0.090000	51,677.55	9%
07/01/2001	12/31/2001	184	0.035288	20,262.00	7%
01/01/2002	12/31/2002	365	0.060000	34,451.70	6%
01/01/2003	06/30/2003	181	0.024795	14,236.89	5%
07/01/2003	12/31/2003	184	0.025205	14,472.86	5%
01/01/2004	06/30/2004	182	0.019945	11,452.44	4%
07/01/2004	11/30/2004	153	0.016767	9,627.60	4%

(No. of days) 4,643

INTEREST DUE

\$562,098

=====

David Hughes

From: JANET SIEFERMAN [JSIEFERMAN@revenue.state.il.us]
Sent: Thursday, March 24, 2005 2:01 PM
To: MICHAEL COVENY
Subject: Exxon



Exxon Tax &
Interest.xls

Mike,

I am attaching an excel schedule that shows the revised tax and interest due. I updated the interest to 3/31/05, and I also have the daily accrual amounts.

I have all the revised audit reports and other schedules I did. If you or the taxpayer would like to see these, I can provide them to you.

Let me know if you need anything else.

Jan

Jan Sieferman
jsieferman@revenue.state.il.us
Hearings & Litigation Support
312-814-4218

TAX AND INTEREST DUE

	<u>TAX DUE</u>	<u>LESS: TAX PAID</u>	<u>NET TAX DUE</u>	<u>INTEREST TO 3/31/05</u>	<u>DAILY INTEREST ACCRUAL</u>
1988	955,657 (1)		955,657	1,208,814	130.91
1989	165,993		165,993	194,970	22.74
1990	434,163		434,163	471,025	59.47
1991	574,195		574,195	571,127	78.66
1992	440,217 (2)		440,217	394,989	60.30
1993	615,529 (2)	129,876 (3)	485,653 (3)	467,493 (3)	66.53
1994	345,312 (2)	345,312 (3)	0 (3)	163,025 (3)	0.00
TOTALS	<u><u>3,531,066</u></u>	<u><u>475,188</u></u>	<u><u>3,055,878</u></u>	<u><u>3,471,443</u></u>	<u><u>418.61</u></u>

TOTAL TAX AND INTEREST DUE AS OF 11/30/2004 6,527,321

AMOUNTS DUE WITH ADDITIONAL DAILY INTEREST ACCRUAL:			
IF PAID ON	4/4/2005	AMOUNT DUE IS:	6,528,995
IF PAID ON	4/5/2005	AMOUNT DUE IS:	6,529,414
IF PAID ON	4/6/2005	AMOUNT DUE IS:	6,529,833
IF PAID ON	4/7/2005	AMOUNT DUE IS:	6,530,251
IF PAID ON	4/8/2005	AMOUNT DUE IS:	6,530,670

- (1) Total NOD tax is reduced by allowable Illinois Net Loss Carryforward
- (2) Total NOD tax is reduced by agreed elimination of 20% of Exxon Overseas Investment Co. (6/25/99 Agreed Order)
- (3) Taxpayer made a \$475,188 payment on 10/20/2000, which will be allocated to 1993 and 1994. The interest shown was computed taking this payment into account. Tax due for 1994 was completely offset by the payment, and so interest is computed to 10/20/2000, the date of payment. No interest accrues after this date.

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

EXXONMOBIL CORPORATION &)	
AFFILIATED COMPANIES)	
)	
Petitioner,)	
)	
v.	)	No.
)	
BRIAN HAMER, in his official capacity as)	
DIRECTOR OF THE ILLINOIS DEPARTMENT)	
OF REVENUE, and the ILLINOIS DEPARTMENT)	
OF REVENUE,)	
)	
Defendants.)	

PETITION

Petitioner, ExxonMobil Corporation & Affiliated Companies (“Petitioner”), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendants, the Illinois Department of Revenue (“Department”) and Brian Hamer, Director of the Department (“Director Hamer”), and alleges as follows:

PARTIES

1. Petitioner is a New Jersey corporation located at 800 Bell Street, CORP-EMB-2671C, Houston, Texas, 77002; and can be reached at 713-656-4342.
2. Petitioner is represented by Horwood Marcus & Berk Chartered attorneys Marilyn A. Wethekam and Breen M. Schiller located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, and can be reached at 312-606-3240 or 312-606-3220, respectively.
3. Petitioner’s FEIN is 13-5409005.
4. Petitioner’s Illinois Account Number is 13539-35104.

Ex. B

5. 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.

6. Director Hamer is the current Director of the Department.

7. Director Hamer is lawfully appointed by the Governor of the State of Illinois to execute the powers and discharge the duties vested by law in the Director of the Department. 20 ILCS 5/5-20.

NOTICE

8. On October 24, 2013, the Department issued a Notice of Claim Denial (“Notice”) for the taxable years ending December 31, 1989 through December 31, 1991 (“Years at Issue”) denying Petitioner’s claims for refund of its Illinois corporate income tax overpayments in the following amounts:

- Denied in full \$165,993.00 for the taxable year ending December 31, 1989;
- Partially denied the overpayment of \$195,904 by \$188,789.00 for a net claim amount of \$7,115.00 for the taxable year ending December 31, 1990; and
- Denied in full \$12,825.00 for the taxable year ending December 31, 1991.

9. A true and accurate copy of the Notice is attached hereto as Exhibit A.

10. The total amount denied is \$367,607.00.

11. In issuing the Notice, the Department took no issue with the amended returns filed by Petitioner reflecting federal adjustments (“RAR Returns”) for the Years at Issue; however, the Department used Petitioner’s filing of the RAR Returns as an opportunity to adjust the composition of Petitioner’s Unitary Group as filed on its original returns for the Years at Issue.

12. Specifically, the returns for the Years at Issue were adjusted to include Exxon Overseas Investment Corporation (“EOIC”) in Petitioner’s Illinois unitary group thereby offsetting Petitioner’s overpayments on account and reducing the amounts eligible for refund

JURISDICTION

13. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

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

BACKGROUND

15. Petitioner timely filed its amended returns for the Years at Issue reporting federal RAR adjustments resulting in a total refund request of \$374,723.00.

16. The Department denied \$367,607.00 of Petitioner’s refund claim using the filing of Petitioner’s RAR Returns as an opportunity to adjust the composition of Petitioner’s Illinois unitary group for the Years at Issue, specifically to include EOIC.

17. The inclusion of EOIC was unrelated to the federal RAR adjustments that were reported on Exxon’s RAR Returns and the applicable statute of limitations for the Years at Issue had closed.

18. The Department argued that it may adjust a taxpayer’s liability, at any time, and for any reason, in order to offset refund claims related to federal changes even when the adjustment does not relate to the federal change and the statute of limitation for assessment and collection has expired.

COUNT I

Pursuant to 35 ILCS § 5/911(b), a refund is due and owing when federal changes reduce Illinois taxable income.

19. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 18, inclusive, hereinabove.

20. In any case where notification of an alteration is required by Section 506(b), a claim for refund may be filed within 2 years after the date on which such notification was due (regardless of whether such notice was given). 35 ILCS §5/911(b).

21. The amount recoverable pursuant to a claim filed under Section 506(b) is limited to the amount of any overpayment resulting under the Illinois corporate and replacement income tax act (the "Act") from recomputation of the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported. *Id.*

22. The Internal Revenue Service ("IRS"), for the Years at Issue, reduced Petitioner's taxable income.

23. Consistent with 35 ILCS 5/506(b), Petitioner was required to file and did timely file a notification of a change in federal taxable income for the Years at Issue.

24. The notification was filed in the form of an amended return Form IL1120X and requested a refund in the amount of \$374,222 for the 1989, 1990 and 1991 tax years respectively.

25. The claim for refund was timely filed within 2 years after the date the notification as due.

26. Section 911(b)(1) specifically provides that the amount recoverable is limited to the amount of the overpayment that results from the recomputation of the taxpayer's net income after giving effect to the federal changes to taxable income.

27. The Department has previously audited the Years at Issue and determined Petitioner's taxable income. True and accurate copies of the Department's audit reports are attached as Exhibit B.

28. Pursuant to the clear language of Section 911(b)(1) the only adjustment that is statutorily authorized is an adjustment to Petitioner's net income to reflect the federal adjustments to income.

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

- a. finds and declares that the language of Section 911(b) is clear;
- b. finds and declares that a refund is due and owing when federal changes reduce Illinois taxable income;
- c. finds and declares that pursuant to the clear language of Section 911(b)(1) the only adjustment that is statutorily authorized is an adjustment to Petitioner's net income to reflect the federal adjustments to income;
- d. enters judgment in favor of Petitioner and against Defendants; and
- e. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

Pursuant to the Department's own interpretations, Petitioner is entitled to a refund.

29. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 28, inclusive, hereinabove.

30. The Department itself has interpreted Section 911(b)(1) consistent with the Petitioner interpretation of the statutory provision.

31. The Department has adopted the following four step process for the application of Section 911(b):

- a. identify the federal alteration required to be reported;
- b. identify the item or items reflected in the alteration that impacts the taxpayer's Illinois tax liability;
- c. recompute the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported (the "Recomputation of Illinois Tax"); and
- d. limit the amount of any Illinois refund to the amount of the overpayment resulting from the recomputation of Illinois Tax. Administrative Hearing Decision IT 08-03 (March 12, 2008).

32. Pursuant to the Department's four step process, a refund is due and owing to Petitioner.

33. Petitioner identified the changes to federal taxable income;

34. Petitioner reflected the impact of those changes with respect to its net income as determined by the Department on audit;

35. Petitioner recomputed its taxable income after incorporating the federal changes; and

36. The refund request and shown on the IL1120X was limited to the amount of the overpayment that resulted from the federal adjustments.

37. Therefore, consistent with the Department's own arguments the refund is due and owing.

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

- a. finds and declares that the Department has adopted a four step process in applying Section 911(b);
- b. finds and declares that Petitioner satisfied all four steps in the four step process of Section 911(b);
- c. finds and declares that consistent with the Department's four step process, a refund is due and owing to Petitioner;
- d. enters judgment in favor of Petitioner and against Defendants; and
- e. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT III

**The Illinois First District Appellate Court's holding in
Con-Way Transportation Servs., Inc. v. Hamer,
supports the conclusion that a refund is due and owing.**

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

39. The Illinois First District Appellate Court's decision in *Con-Way Transportation Servs., Inc. v. Hamer*, Docket No. 08L050477 (Ill. App. 1st Dist. 2013) ("*Con-Way*") further supports the conclusion that a refund is due and owing.

40. The *Con-Way* court in analyzing Section 911(b) concluded that Section 911(b) directs parties to "giv[e] effect to the item or items reflected in the alteration," though "the amount recoverable pursuant to a claim filed under this Section shall be limited to the amount of any overpayment resulting under this Act from recomputation of the taxpayer's net income. *Id.*

41. The Court found to give effect to the items reflected in the alteration; the new federal taxable income figure must be applied to the existing Illinois return to determine any change in the taxpayer's net income for the taxable year. *Id.*

42. If there is any change in net income, the question becomes whether such change results in an overpayment. If it does, the taxpayer is entitled to a refund.

43. Here, Petitioner applied the federal changes to the existing Illinois return as determined on audit by the Department and computed the tax effect of those changes.

44. Those changes resulted in an overpayment.

45. As stated by the Appellate Court if the changes result in an overpayment the taxpayer is entitled to a refund.

46. Accordingly, Petitioner is entitled to a refund.

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

- a. finds and declares that the Illinois First District Appellate Court's decision in *Con-Way Transportation Servs., Inc. v. Hamer*, Docket No. 08L050477 (Ill. App. 1st Dist. 2013) ("Con-Way") further supports the conclusion that a refund is due and owing;
- b. finds and declares that the tax effect of Petitioner's application of its federal changes to its existing Illinois return was an overpayment;
- c. finds and declares that Petitioner is entitled to a refund of the overpayment;
- d. enters judgment in favor of Petitioner and against Defendants; and
- e. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT IV

**There is no statutory authority allowing the Department to conduct a second audit of
Petitioner after completing an audit of the same tax years.**

47. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 46, inclusive, hereinabove.

48. The Department audited the books and records of Petitioner for the Years at Issue.

49. A Notice of Deficiency was issued and a timely protest was filed. See Exhibit B.

50. The matter was finally resolved by the Appellate Court. See, Exxon Corporation v. Glen Bower, Director of Revenue, 867 N.E. 115 (Ill. App. 2004), Petition for Leave to Appeal Denied 823 N.E.2d 964 (2004)

51. As a result of the audit, the Department determined Petitioner's taxable income for the Years at Issue.

52. That determination was upheld by the Appellate Court and the Department computed Petitioner's final tax liability for the Years at Issue. A true and accurate copy of the Department's computations is attached hereto as Exhibit C.

53. It is this final determination of taxable income that is the starting point for the adjustment resulting from the federal audit of the Years at Issue.

54. Pursuant to 35 ILCS §5/904(a), as soon as practicable after a return is filed, the Department is required to examine the return to determine the correct amount of tax.

55. If the Department finds that the amount of tax shown on the return is less than the correct amount, the Department will issue a notice of deficiency to the taxpayer, which shall set forth the amount of tax and penalties proposed to be assessed. *Id.*

56. If the Department finds that the tax paid is more than the correct amount, it will credit or refund the overpayment as provided by ILCS §5/909. *Id.*

57. Here, the Department determined the correct amount of tax it deemed “due & owing” during the original audit of the Years at Issue as shown on the Department’s own schedules. See, Exhibit C.

58. The Department’s inclusion of EOIC into Petitioner’s Illinois unitary group was completely unrelated to the RAR Returns filed.

59. To allow the Department an opportunity to “re-audit” Petitioner and bypass the statute of limitations for the Year at Issue is unequitable and leads to unjust results.

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

- a. finds and declares that the Department’s inclusion of EOIC in Petitioner’s Illinois unitary group was unrelated to Petitioner’s RAR Returns filed;
- b. finds and declares that the Department’s inclusion of EOIC in Petitioner’s Illinois unitary group following the filing of Petitioner’s RAR Returns bypassed the traditional statute of limitations;
- c. finds and declares that the Department’s inclusion of EOIC in Petitioner’s Illinois unitary group following the filing of Petitioner’s RAR Returns constituted a “re-audit” of Petitioner’s Years at Issue;
- d. finds and declares that there is no statutory authority allowing the Department to conduct a second audit of Petitioner after completing its original audit for the Years at Issue;
- e. finds and declares that Petitioner is entitled to a refund;
- f. enters judgment in favor of Petitioner and against Defendants; and
- g. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT V

The Department's reliance on federal authority is misplaced.

60. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 59, inclusive, hereinabove.

61. The Department has relied on *Lewis v. Reynolds*, 284 U.S. 281 (1932) ("*Lewis*") as the basis for its authority to adjust Exxon's Illinois unitary group for the Years at Issue thereby reducing Exxon's refund claim for the Years at Issue for which the statute of limitations had closed.

62. In *Lewis*, the United States Supreme Court determined that the IRS could use a taxpayer's overpayment to offset tax deficiencies from the same tax year as the overpayment even though the statute of limitations barred the IRS from bringing a claim to collect those deficiencies. See, *Id.*, 284 U.S. at 283.

63. The IRS discovered the tax deficiencies in an audit commenced as a result of the taxpayer's claim for overpayment. See, *Id.* at 282.

64. The portion of *Lewis* holding that the IRS can use tax overpayments to offset tax deficiencies when collection of those deficiencies is barred by the statute of limitations has been superseded by statute. See, 26 U.S.C. § 6401¹. *Gordon v. United States*, 2009 U.S. Dist. LEXIS 115352, 28-29 (S.D. N.Y. 2009).

65. The Department's reliance on *Lewis* is misplaced.

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

- a. finds and declares that the portion of *Lewis* regarding the IRS's ability to use tax overpayments to offset tax deficiencies when collection of those deficiencies is

¹ Please note, however, that *Lewis* is still good law in that a taxpayer who seeks a refund must show an overall overpayment for the tax year in question.

barred by the statute of limitations has been superseded and is no longer good authority;

- b. finds and declares that the Department's reliance on *Lewis* is misplaced;
- c. finds and declares that the Department's subsequent adjustment to Petitioner's unitary group to include EOIC was unrelated to Petitioner's RAR Returns filed;
- d. finds and declares that Petitioner is entitled to a refund;
- e. enters judgment in favor of Petitioner and against Defendants; and
- f. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT VI

Lewis does not support the proposition that it is acceptable to use an overpayment to offset taxes that are not yet due.

66. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 65, inclusive, hereinabove.

67. The Department adjusted Petitioner's Illinois unitary group to include EOIC thereby offsetting Petitioner's overpayments on account and reducing the amounts eligible for refund.

68. The Department previously audited the tax year and assessed the tax amounts it determined to be due. The Appellate Court affirmed that determination.

69. The issuance of the Notices of Deficiency by the Department coupled with the Appellate Court's decision constituted the final liability for the Years at Issue.

70. The Department alleged that the expired statute of limitations only precluded it from issuing a Notice of Deficiency with respect to adjustments unrelated to Exxon's RAR Returns. *Lewis v. Reynolds, 284 U.S. 281 (1932)*

71. The Department argued that where a claim for refund is filed, the Department can make adjustments to reduce the refund against any liability regardless of whether the collection remedies are closed to the Department.

72. The Department cited to both 35 ILCS §§5/904 and 5/909, in conjunction with *Lewis*, as its basis to apply the offset.

73. The holding in *Lewis* is not as broad as the Department contends. See, *Gordon*, 2009 U.S. Dist. LEXIS 115352.

74. Nothing in *Lewis* permits the IRS to use an overpayment to offset taxes that are not yet due. *Id.*, at 2009 U.S. Dist. LEXIS 115352 (S.D.N.Y. 2009).

75. The subsequent adjustment to Petitioner's unitary group to include EOIC does not give rise to a final liability that is due and owing as the final liability for the Years at Issue was previously determined by the Appellate Court when it upheld the Department's Notices of Deficiency.

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

- a. finds and declares that the Supreme Court's holding in *Lewis*, does not support the proposition that an overpayment can be used to offset taxes that are not yet determined due;
- b. finds and declares that the Department's reliance on *Lewis* is misplaced;
- c. finds and declares that the Department's interpretation and subsequent application of the breadth of the *Lewis* holding was erroneous;
- d. finds and declares that the Department's subsequent adjustment to Petitioner's unitary group to include EOIC was unrelated to Petitioner's RAR Returns filed;
- e. finds and declares that Petitioner is entitled to a refund;

- f. enters judgment in favor of Petitioner and against Defendants; and
- g. grants such further relief as this Tribunal deems appropriate under the circumstances.

**Respectfully Submitted,
Petitioner**

**EXXONMOBIL CORPORATION &
AFFILIATED COMPANIES**

By: Breen M. Schiller
One of Petitioner's Attorneys

Marilyn A. Wethekam
Breen M. Schiller
Horwood Marcus & Berk Chtd.
500 W. Madison St., Ste. 3700
Chicago, Illinois 60661
(312) 60-3200



**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**

James R. Thompson Center
100 West Randolph Street, Level 7-900
Chicago, Illinois 60601
(312) 814-6114

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

Exxon Mobil Corporation

Taxpayer

No.14-IT-014

NOTICE OF INITIAL STATUS CONFERENCE

To:

**Horwood Marcus & Berk
Marilyn A Wethekam, Breen M Schiller
500 West Madison Street Suite 3700
Chicago IL 60661**

**Exxon Mobil Corporation
800 Bell Street Corp-EMD-2647D
Houston TX 77002**

YOU ARE HEREBY NOTIFIED, pursuant to 86 Ill. Admin. Code, Ch. I, Section 200.140, that a **MANDATORY** status conference in regard to the protest you have filed in the above entitled matter will be held on Wednesday, February 19, 2014, at 03:30 p.m. at the offices of the Illinois Department of Revenue, 100 W. Randolph Street, Level 7-900, Chicago, Illinois. **All parties are required to be present or to otherwise participate by telephone** to ascertain the status of this case and determine the course of action, if any, to be taken to expedite resolution. **Legal representatives (other than State's Attorneys) are required to file a Power of Attorney (IDR Form 2848-AH) before they may participate in these proceedings or acquire the right to obtain information in regard to the above named taxpayer.** Should you have any questions or concerns with respect to this Notice, please call the number listed above and ask to speak with the Department's representative as designated on the bottom left side of this notice.

PLEASE TAKE NOTE THAT YOUR FAILURE TO APPEAR OR PARTICIPATE PURSUANT TO THIS NOTICE WILL RESULT IN AN IMMEDIATE TERMINATION OF THE PROCEEDINGS AND A FINALIZATION OF THE LIABILITIES AND/OR CLAIMS AT ISSUE.

**Date: 01/17/2014
Litigator: Rebecca Kulekowskis 312-814-3318
Litigator: Gary Heald 312-814-4277**

**Issued by the Administrative Clerk
Office of Administrative Hearings**

Please Note: Applicable hearing regulations (Sec. 200.140a) do not permit any continuance of this conference

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

Exxon Mobil Corporation

Taxpayer

No. 14-IT-014

To:

Horwood Marcus & Berk
Marilyn A Wethekam, Breen M Schiller
500 West Madison Street Suite 3700
Chicago IL 60661

Exxon Mobil Corporation
800 Bell Street Corp-EMD-2647D
Houston TX 77002

The undersigned hereby certifies that a copy of the attached notice was served upon the above named person or persons by placing it in a sealed envelope, postage prepaid, addressed as indicated, and depositing same in the United States Mail at the James R. Thompson Center, 100 W. Randolph Street, Chicago, Illinois on the date indicated below, before 5:00 p.m., all in the regular course of my duties as an employee of the Illinois Department of Revenue.

First Class

Certified - Return Receipt
Request#

Special Delivery

Registered - Return Receipt
Request #

(Signed)

Alfred Milam

Date:

JAN 21 2014

(Attach Receipt Here)

Please return to Administrative Law Judge John White 7-900



Illinois Department of Revenue

101 W. Jefferson St.
Springfield, IL 62702

(TS)

GRS 75711

SES/Ent
11/6/13

RECEIVED

NOV 05 2013

ExxonMobil Tax

TRAC - SHARED ADMIN TEAM

10/24/2013

NOTICE OF DENIAL

EXXON MOBILE CORP & AFFILIATED COMPANIES
4500 DACOMA ST RM 205D
HOUSTON, TX 77092-8614

FORM: IL-1120
TRACK NUMBER: A1210178560
FEIN: 13-5409005

TAXABLE YEARS ENDING
12/31/1989, 12/31/1990, 12/31/1991

AMOUNT DENIED
\$367,707.00

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim(s) for refund of income tax overpayment in the amount(s) of \$165,993.00 for the taxable year ending 12/31/1989, \$195,904.00 for taxable year ending 12/31/1990 and \$12,825.00 for taxable year 12/31/1991 filed on 03/01/2010 are denied to the extent shown above.

IF YOU DO NOT AGREE, Section 910(a) of the Act provides that the Department shall reconsider the denial if within 60 days of the date of this notice, the claimant or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the proposed denial of your claim, you may file a protest and, if desired, request a hearing. If an adequate and timely protest is not received, the denial of your claim to the extent shown above will become final as of the expiration of the aforementioned 60-day period pursuant to Section 909(f). A protest, if filed, should be forwarded to the address shown below.

Sincerely,

Brian Hamer
Director

Enclosures:BAR-14
IDR-867
Return Envelope

NOTICE SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD, IL 62794-9012
PHONE: 217 524-5292
ATTENTION: JAR A1210178560

STATEMENT

EXXON MOBILE CORP & AFFILIATED COMPANIES
4500 DACOMA ST RM 205D
HOUSTON, TX 77092-8614

TAXABLE YEARS ENDING
12/31/1989, 12/31/1990, 12/31/1991
TRACK NUMBER: A1210178560

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim for refund of income tax overpayment in the amount of \$165,993.00 for the taxable year ending 12/31/1989 and filed on 03/01/2010 is denied in full. The overpayment of \$195,905.00 for the taxable year ending 12/31/1990 and filed on 03/01/2010 is partially denied by \$188,789.00 for a net claim amount of \$7,115.00. The overpayment of \$12,825.00 for the taxable year ending 12/31/1991 and filed on 03/01/2010 is denied in full. The Department holds the tax as determined by the audit examination concluded on 04/18/2013 to be the correct liability for these years and thus finds a denial of overpayment to exist.

HORWOOD MARCUS & BERK
Chartered

Attorneys at Law

500 West Madison Street
Suite 3700
Chicago, Illinois 60661

phone: (312) 606 3200
fax: (312) 606-3232

www.saltlawyers.com

Marilyn A. Wetheka
Direct Dial: (312) 606-3240
Direct Fax: (312) 267-2220
Direct e-mail: mwetheka@hmbllaw.com

December 20, 2013

PROTEST AND REQUEST FOR HEARING

**BY CERTIFIED MAIL (#7012 3050 0002 0095 9337)
RETURN RECEIPT REQUESTED**

Illinois Department of Revenue
Attn: JAR A1210178560
Notice Section
P.O. Box 19012
Springfield, Illinois 62794-9012

**Re: ExxonMobil Corporation & Affiliated Companies
FEIN: 13-5409005
Taxable Years Ending: 12/31/1989, 12/31/1990 & 12/31/1991**

Greetings:

The Taxpayer, ExxonMobil Corporation ("Exxon"), by and through its attorneys Horwood Marcus & Berk Chartered, hereby protests and takes exception to the Notice of Claim Denial ("Notice") issued by the Illinois Department of Revenue ("Department") on October 24, 2013 for the taxable years ending December 31, 1989 through December 31, 1991 ("Years at Issue"). In support of this Protest, Exxon states as follows:

I. Notice of Claim Denial

On October 24, 2013, the Department issued a Notice of Claim Denial for the Years at Issue denying Exxon's claims for refund of its Illinois corporate income tax overpayments in the following amounts:

- Denied in full \$165,993.00 for the taxable year ending December 31, 1989;
- Partially denied the overpayment of \$195,904 by \$188,789.00 for a net claim amount of \$7,115.00 for the taxable year ending December 31, 1990; and
- Denied in full \$12,825.00 for the taxable year ending December 31, 1991.

Illinois Department of Revenue
Notice Section
December 20, 2013
Page 2

A true and accurate copy of the Notice is attached hereto as Exhibit A. The total amount denied is \$367,607.00. In issuing the Notice, the Department took no issue with the amended returns filed by Exxon reflecting federal adjustments ("RAR Returns") for the Years at Issue; however, the Department used Exxon's filing of the RAR Returns as an opportunity to adjust the composition of Exxon's Unitary Group as filed on its original returns for the Years at Issue. Specifically, the returns for the Years at Issue were adjusted to include Exxon Overseas Investment Corporation ("EOIC") in Exxon's Illinois unitary group thereby offsetting Exxon's overpayments on account and reducing the amounts eligible for refund.

II. Hearing Requested

At this time, Exxon respectfully requests a formal administrative hearing on this Protest pursuant to the Department's regulation 86 Ill. Admin. Code §200.120. However, Exxon reserves the right to elect to transfer this protest to the Illinois Independent Tax Tribunal as soon as it is operational.

III. Facts

Exxon timely filed its amended returns for the Years at Issue reporting federal RAR adjustments resulting in a total refund request of \$374,723.00. The Department denied \$367,607.00 of Exxon's refund claim using the filing of Exxon's RAR Returns as an opportunity to adjust the composition of Exxon's Illinois unitary group for the Years at Issue, specifically to include EOIC. The inclusion of EOIC was unrelated to the federal RAR adjustments that were reported on Exxon's RAR Returns and the applicable statute of limitations for the Years at Issue had closed.

The Department argued that it may adjust a taxpayer's liability, at any time, and for any reason, in order to offset refund claims related to federal changes even when the adjustment does not relate to the federal change and the statute of limitation for assessment and collection has expired.

IV. Arguments

- a. **The language of Section 911(b) is clear. A refund is due and owing when federal changes reduce Illinois taxable income.**

35 ILCS 5/911(b) provides in pertinent part:

- (1) In general. In any case where notification of an alteration is required by Section 506 (b), a claim for refund may be filed within 2 years after the date on which such notification was due (regardless of whether such notice was given), but the amount recoverable pursuant to a claim filed under this Section

Illinois Department of Revenue
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December 20, 2013
Page 3

shall be limited to the amount of any overpayment resulting under this Act from recomputation of the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported.

The Internal Revenue Service, for the Years at Issue, reduced the taxable income of Exxon. Thus, consistent with 35 ILCS 5/506(b), Exxon was required to file and did timely file a notification of a change in federal taxable income for the Years at Issue. The notification was filed in the form of an amended return Form IL1120X and requested a refund in the amount of \$374,222 for the 1989, 1990 and 1991 tax years respectively. The claim for refund was timely filed within 2 years after the date the notification as due.

Section 911(b)(1) specifically provides that the amount recoverable is limited to the amount of the overpayment that results from the recomputation of the taxpayer's net income after giving effect to the federal changes to taxable income. The Department has previously audited the Years at Issue and determined Exxon's taxable income. Copies of the Department's audit reports are attached as Exhibit B. Pursuant to the clear language of Section 911(b)(1) the only adjustment that now is statutorily authorized is an adjustment to Exxon's net income to reflect the federal adjustments to income.

The Department itself has interpreted Section 911(b)(1) consistent with the Exxon interpretation of the statutory provision. The Department has stated and an Administrative Law Judge has agreed that the application of section 911(b) is the following 4 step process:

IITA Section 911(b), when analyzed closely, requires the following four-step process:

1. identify the federal alteration required to be reported;
2. identify the item or items reflected in the alteration that impacts the taxpayer's Illinois tax liability;
3. recompute the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported (the "Recomputation of Illinois Tax"); and
4. limit the amount of any Illinois refund to the amount of the overpayment resulting from the recomputation of Illinois Tax. Administrative Hearing Decision IT 08-03 (March 12, 2008).

Applying the four step process to the issue at hand clearly supports the conclusion that a refund is due and owing to Exxon.

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Page 4

1. Exxon identified the changes to federal taxable income;
2. Exxon reflected the impact of those changes with respect to its net income as determined by the Department on audit;
3. Exxon recomputed its taxable income after incorporating the federal changes; and
4. The refund request and shown on the IL1120X was limited to the amount of the overpayment that resulted from the federal adjustments.

Therefore, consistent with the Department's own arguments the refund is due and owing.

The Appellate Court's decision in *Con-Way Transportation Servs., Inc. v. Hamer*, Docket No. 08L050477 (Ill. App. 1st Dist. 2013) further supports the conclusion that a refund is due and owing. The court in analyzing Section 911(b) concluded:

Section 911(b) next directs parties to "giv[e] effect to the item or items reflected in the alteration," though "the amount recoverable pursuant to a claim filed under this Section shall be limited to the amount of any overpayment resulting under this Act from recomputation of the taxpayer's net income." 35 ILCS 5/911 (b) (West 2008). That is to say, to give effect to the items reflected in the alteration, the new federal taxable income figure must be applied to the existing Illinois return to determine any change in the taxpayer's net income for the taxable year. If there is any change in net income, the question becomes whether such change results in an overpayment. If it does, the taxpayer is entitled to a refund.

Exxon applied the federal changes to the existing Illinois return as determined on audit by the Department and computed the tax effect of those changes. Those changes resulted in an overpayment. As stated by the Appellate Court if the changes result in an overpayment the taxpayer is entitled to a refund.

b. There is no statutory authority allowing the Department to conduct a second audit of Taxpayer after completing an audit of the same tax years.

The Department's position is that it may have two bites of the apple. However, that position is without statutory or regulatory merit. The Department audited the books and records of Exxon for the Years at Issue. A Notice of Deficiency was issued and a timely protest was filed.¹ The matter was finally resolved by the Appellate Court. *Exxon Corporation v. Glen Bower, Director of Revenue*, 867 N.E. 115 (Ill. App. 2004), Petition for Leave to Appeal Denied

¹ Copies of the relevant documents are attached as Exhibit B.

Illinois Department of Revenue
Notice Section
December 20, 2013
Page 5

823 N.E.2d 964 (2004) As a result of the audit, the Department determined Exxon's taxable income for the Years at Issue. That determination was upheld by the Appellate Court and the Department computed Exxon's final tax liability for the Years at Issue. The Department's computations are found in Exhibit C, attached. It is this final determination of taxable income that is the starting point for the adjustment resulting from the federal audit of the Years at Issue.

Further, pursuant to 35 ILCS §5/904(a), as soon as practicable after a return is filed, the Department is required to examine the return to determine the correct amount of tax. If the Department finds that the amount of tax shown on the return is less than the correct amount, the Department will issue a notice of deficiency to the taxpayer, which shall set forth the amount of tax and penalties proposed to be assessed. *Id.* If the Department finds that the tax paid is more than the correct amount, it will credit or refund the overpayment as provided by ILCS §5/909. *Id.* Here, the Department determined the correct amount of tax it deemed "due & owing" during the original audit of the Years at Issue as shown on the Department's own schedules. Exhibit C. The Department's inclusion of EOIC into Exxon's Illinois unitary group was completely unrelated to the RAR Returns filed. To allow the Department an opportunity to "re-audit" Exxon and bypass the statute of limitations for the Year at Issue is unequitable and leads to unjust results.

c. The Department's reliance on federal authority is misplaced.

The Department has relied on *Lewis v. Reynolds*, 284 U.S. 281 (1932) as the basis for its authority to adjust Exxon's Illinois unitary group for the Years at Issue thereby reducing Exxon's refund claim for the Years at Issue for which the statute of limitations had closed. In *Lewis*, the Supreme Court determined that the Internal Revenue Service ("IRS") could use a taxpayer's overpayment to offset tax deficiencies from the same tax year as the overpayment even though the statute of limitations barred the IRS from bringing a claim to collect those deficiencies. *See, Id.*, 284 U.S. at 283. The IRS discovered the tax deficiencies in an audit commenced as a result of the taxpayer's claim for overpayment. *See, Id.* at 282. However, the Department's reliance on *Lewis* is misplaced. The portion of *Lewis* holding that the IRS can use tax overpayments to offset tax deficiencies when collection of those deficiencies is barred by the statute of limitations has been superseded by statute. *See*, 26 U.S.C. § 6401 (defining the amount of the taxpayer's overpayment, and therefore the amount refundable under section 6402, as including "that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto")². *Gordon v. United States*, 2009 U.S. Dist. LEXIS 115352, 28-29 (S.D. N.Y. 2009).

² Please note, however, that *Lewis* is still good law in that a taxpayer who seeks a refund must show an overall overpayment for the tax year in question.

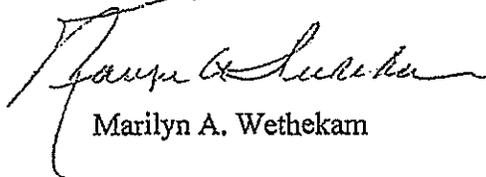
Illinois Department of Revenue
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Page 6

Additionally, the Department alleges that the expired statute of limitations only precluded it from issuing a Notice of Deficiency with respect to adjustments unrelated to Exxon's RAR Returns. The Department argued that where a claim for refund is filed, the Department can make adjustments to reduce the refund against any liability regardless of whether the collection remedies are closed to the Department. The Department cited to both 35 ILCS §§5/904 and 5/909, in conjunction with *Lewis*, as its basis to apply the offset. However, the holding in *Lewis* is not as broad as the Department contends. See, *Gordon*, 2009 U.S. Dist. LEXIS 115352. Specifically, nothing in *Lewis* permits the IRS to use an overpayment to offset taxes that are not yet due. *Id.*, at 2009 U.S. Dist. LEXIS 115352 (S.D.N.Y. 2009). Here, the Department adjusted Exxon's Illinois unitary group to include EOIC thereby offsetting Exxon's overpayments on account and reducing the amounts eligible for refund. However, the Department previously audited the tax year and assessed the tax amounts it determined to be due. The Appellate Court affirmed that determination. The issuance of the Notices of Deficiency by the Department coupled with the Appellate Court's decision constituted the final liability for the Years at Issue. The subsequent adjustment to the Exxon unitary group to include EOIC does not give rise to a final liability that is due and owing as the final liability for the Years at Issue was previously determined by the Appellate Court when it upheld the Department's Notices of Deficiency.

V. Request for Relief

Based on the foregoing, Exxon respectfully requests that the Department withdraw its Notice for the Years at Issue and, based on the position stated in Part IV of this Protest and Request for Hearing, grant in full the refunds sought by Exxon in its returns. Exxon specifically reserves the right to amend this Protest at any time prior to the entry of a pre-trial order. A Power of Attorney authorizing our representation of Exxon is enclosed for your reference.

Sincerely,



Marilyn A. Wethekam

MAW/ko

Enclosure

cc: John H. Paraskevas (w/attachments)
Breen M. Schiller, Esq. (w/o attachments)

Stoneking, Vicky

From: Robson, Jim
Sent: Wednesday, January 08, 2014 1:52 PM
To: Stoneking, Vicky
Subject: Protest for Exxon Mobil
Attachments: ExxonMobil Corp 1989 1990 1991.pdf



Illinois Department of Revenue

MEMORANDUM

TO: Administrative Hearings Division
Vicky Stoneking
Mail Code: 5-500 WIB

FROM: IT Technical Review Section
Reviewer: Jim Robson
Mail Code: 3-327

DATE: 1/8/2014

RE: **Exxon Mobil**

FEIN/SSN: 13-5409005
Form: IL-1120
Taxable Years: 1989-1991
Track Number: A1210178560

A copy of the protest and related statutory notice on this taxpayer is hereby transmitted to your Division for appropriate action.

- Notice(s) of Deficiency Issued
- Notice(s) of Denial Issued 10/24/2013
- Protest(s) Filed Date 12/20/2013 post mark
- Other

7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

Marilyn Wethekam		
Name	Name	Name
500 W. Madison St., Ste. 3700		
Street address	Street address	Street address
Chicago IL 60661		
City State ZIP	City State ZIP	City State ZIP
(312) 606-3240	()	()
Daytime phone number	Daytime phone number	Daytime phone number

Step 3: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Taxpayer's signature	Title, if applicable	Date
Spouse's signature	Title, if applicable	Date
<i>[Signature]</i>	Vice President	12/16/2013
If corporation or partnership, signature of officer or partner	Title, if applicable	Date

Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

I declare that I am not currently under suspension or disbarment and that I am
 e a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
 e duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
 e enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

Attorney	Illinois	<i>[Signature]</i>	12/10/13
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date
Attorney	Illinois	<i>[Signature]</i>	12/10/13
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date

Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following.

Any person signing as or for the taxpayer

_____ is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

Signature of witness	Date
Signature of witness	Date

_____ appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary	Date
---------------------	------

Notary seal