

ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS

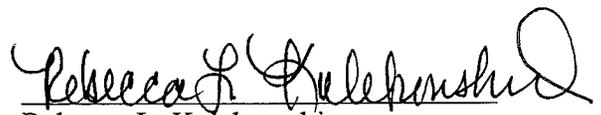
EXXONMOBIL CORPORATION &, )  
AFFILIATED COMPANIES )  
v. )  
STATE OF ILLINOIS )  
DEPARTMENT OF REVENUE )

RECEIVED  
FEB 21 2014  
14-TT-0005  
BY: \_\_\_\_\_

CERTIFICATE OF SERVICE

Rebecca L. Kulekowskis certifies that she is a Special Assistant Attorney General of the State of Illinois duly appointed by Lisa Madigan, Attorney General of the State of Illinois; that she is authorized to make this certificate; that on February 21, 2014, before the hour of 5:00 p.m. (C.S.T) she served a true and exact copy of the foregoing instrument entitled **ANSWER** on the above Taxpayer/Petitioner by sending same as an attachment to an electronic mail message addressed to the following individuals at their designated email addresses:

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CHICAGO, ILLINOIS**

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<b>EXXONMOBIL CORPORATION &amp;</b>	)	
<b>AFFILIATED COMPANIES,</b>	)	
<b>Taxpayer</b>	)	
<b>v.</b>	)	<b>14-TT-0005</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
<b>Department</b>	)	

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**ANSWER**

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Taxpayer’s Petition respectfully pleads 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.

**ANSWER:** The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a) (1) (A) (86 Ill. Adm. Code §5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, Department admits the factual allegations contained in Paragraph 1.

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.

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

3. Petitioner's FEIN is 13-5409005.

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

4. Petitioner's Illinois Account Number is 13539-35104.

**ANSWER:** The information contained in Paragraph 4 is required by Rule 310(a) (1) (C) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, Department admits the factual allegations contained in Paragraph 4.

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.

**ANSWER:** The Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.), which is relevant to the legal claims raised in Taxpayer's

Petition. The term “tax laws” is vague and therefore the Department denies all other allegations contained in Paragraph 5 and demands strict proof thereof.

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

**ANSWER:** The Department admits Paragraph 6.

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.

**ANSWER:** The Department admits Paragraph 7.

#### **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.

**ANSWER:** A copy of the Notice is required to be attached to the Taxpayer’s Petition pursuant to Rule 310(a) (1) (D) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Further Rule 310(a) (1) (F) requires the Taxpayer to separately number paragraphs, not bullet points. To the extent an answer

is required, Department admits Department issued a Notice of Denial dated October 24, 2013, to ExxonMobile Corp. & Affiliated Companies for the taxable years ending 12/31/1989; 12/31/1990 and 12/31/1991, the denial amount was \$367,707.00. Department admits Taxpayer's claim for refund of income tax overpayment in the amount of \$165,993.00 for the taxable year ending 12/31/1989 filed on 3/1/2010 was denied in full. The Taxpayer's claim for refund of income tax overpayment in the amount of \$195,905.00 for the taxable year 12/31/1990 filed on 3/1/2010 was partially denied in the amount of \$188,789.00 for a net claim of \$7,115.00. The Taxpayer's claim for refund of income tax overpayment of \$12,825 for the taxable year ending 12/31/1991 filed on 3/1/2010 was denied in full.

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

**ANSWER:** A copy of the Notice is required by Rule 310(a) (1) (D) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). To the extent an answer is required, Department admits Department issued a Notice of Denial dated October 24, 2013, to ExxonMobile Corp. & Affiliated Companies for the taxable years ending 12/31/1989; 12/31/1990 and 12/31/1991, the denial amount was \$367,707.00 and that the Notice of Denial speaks for itself.

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

**ANSWER:** Department admits Paragraph 10.

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.

**ANSWER:** The Department admits that the Department adjusted Taxpayer’s unitary business group to include Exxon Overseas Investment Corporation (“EOIC”). The Department denies the remaining factual allegations contained in Paragraph 11 and demands strict proof thereof.

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

**ANSWER:** The Department admits Paragraph 12.

### **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.

**ANSWER:** The Department admits Paragraph 13.

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.

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

the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 14 and states that such statute speaks for itself.

### **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.

**ANSWER:** Paragraph 15 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department admits that the Taxpayer did file IL-1120Xs for years 1989, 1990 and 1991 on 3/1/2010 requesting a total refund of \$374,722.00. Department denies the remaining allegations in Paragraph 15 and demands strict proof thereof.

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.

**ANSWER:** The Department admits that it did deny \$367,607 of Taxpayer's claims. The Department admits that it did include EOIC in the Taxpayer's unitary group. The Department denies all other factual allegations in Paragraph 16 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 17 contains legal conclusions, not material allegations of fact and therefore does not require an answer pursuant to Rule 310(b) (2). Department denies any factual allegations contained in Paragraph 17 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department denies any factual allegations contained in Paragraph 18 and demands strict proof thereof.

## **COUNT I**

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

**ANSWER:** Department incorporates and repeats its answers to Paragraphs 1 through 18 as if fully set forth herein.

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).

**ANSWER:** Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits

the existence, force and effect of 35 ILCS §5/506(b) and §5/911(b) referred to in Paragraph 20 and states that such statues speaks for themselves. Department denies any factual allegations contained in Paragraph 20 and demands strict proof thereof.

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.*

**ANSWER:** Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of 35 ILCS §5/911 (b) referred to in Paragraph 21 and states that such law speaks for itself. Department denies any factual allegations contained in Paragraph 21 and demands strict proof thereof.

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

**ANSWER:** The Department objects to Paragraph 22 in that it is vague as to the phrase “reduced Petitioner’s taxable income”. The Department admits that the IRS made changes to Taxpayer’s taxable income for the Years at Issue that were required to be reported to Illinois pursuant to 35 ILCS 5/506(b). Department denies any other factual allegations contained in Paragraph 22 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of 35 ILCS §5/506(b) referred to in Paragraph 23 and states that such law speaks for itself. The Department admits it did receive IL-1120-X Forms for tax years ending 12/31/1989, 12/31/1990, and 12/31/1991 on 3/1/2010. Department denies any other factual allegations contained in Paragraph 23 and demands strict proof thereof.

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.

**ANSWER:** The Department admits it did receive IL-1120-X Forms for tax years ending 12/31/1989, 12/31/1990, and 12/31/1991 on 3/1/2010. The Department admits the total amount of the refund requested for all three years was \$374,222. The Department denies the remaining allegations in Paragraph 24 and demands strict proof thereof.

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

**ANSWER:** Paragraph 25 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). To the extent an answer is required, Department admits Taxpayer's claim for refund was filed on March 1,

2010. Department denies the remaining factual allegations in Paragraph 25 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 26 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of 35 ILCS §5/911(b) (1) referred to in Paragraph 26 and states that such law speaks for itself. To the extent an answer is required, Department does not contend the claims for refund filed by the Taxpayer exceed the amount recoverable as a result of the federal changes to taxable income. Department denies the remaining factual allegations contained in Paragraph 26 and demands strict proof thereof.

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.

**ANSWER:** The Department admits that it has previously audited the Taxpayer for tax years ending 1989, 1990 and 1991. The Department admits Exhibit B of the Taxpayer's Petition does contain copies of some records maintained by the Department, however the phrase "audit reports" is vague and ambiguous, the Department denies any further factual allegation contained in Paragraph 27 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 28 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of 35 ILCS §5/911(b) (1) referred to in Paragraph 28 and states that such law speaks for itself. The Department denies any factual allegations contained in Paragraph 28 and demands strict proof thereof.

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

- a. deny each prayer for relief in Count I of the Taxpayer's Petition;
- b. find the Notice of Denial is correct as issued;
- c. order judgment in favor of the Department and against the Taxpayer; and
- d. grant any further relief this Tribunal deems just and appropriate.

## **COUNT II**

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

**ANSWER:** Department incorporates and repeats its answers to Paragraphs 1 through 28 as if fully set forth herein.

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

**ANSWER:** Paragraph 30 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of 35 ILCS §5/911(b) (1) referred to in Paragraph 30 and states that such law speaks for itself. The Department denies any factual allegations contained in Paragraph 30 and demands strict proof thereof.

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).

**ANSWER:** Paragraph 31 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of 35 ILCS §5/911(b) (1) referred to in Paragraph 31 and states that such statute and Administrative Hearing Decision IT 08-03 speak for themselves. The Department denies any factual allegations contained in Paragraph 31 and demands strict proof thereof.

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

**ANSWER:** The Department denies the factual allegations contained in Paragraph 32 and demands strict proof thereof.

33. Petitioner identified the changes to federal taxable income;

**ANSWER:** The Department admits it did receive IL-1120-X Forms for tax years ending 12/31/1989, 12/31/1990, and 12/31/1991 on 3/1/2010 which reported the final federal changes to Taxpayer's taxable income. The Department denies any remaining factual allegations contained in Paragraph 33 and demands strict proof thereof.

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

**ANSWER:** Any allegation of fact in Paragraph 34 is vague and contains undefined terms. To the extent an answer is required, the Department denies any factual allegations contained in Paragraph 34 and demands strict proof thereof.

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

**ANSWER:** Any allegation of fact in Paragraph 35 is vague and contains undefined terms. To the extent an answer is required, the Department denies any factual allegations contained in Paragraph 35 and demands strict proof thereof.

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

**ANSWER:** The Department admits that Taxpayer did not seek a refund in excess of that resulting from the federal changes to its taxable income. Department denies that Taxpayer is entitled to the amount of refund claimed. Department denies all other factual allegations contained in Paragraph 36 and demands strict proof thereof.

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

**ANSWER:** The Department denies Paragraph 37.

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

- a. deny each prayer for relief in Count II of the Taxpayer's Petition;
- b. find the Notice of Denial is correct as issued;
- c. order judgment in favor of the Department and against the Taxpayer; and
- d. grants such further relief as this Tribunal deems appropriate under the circumstances.

### **COUNT III**

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

**ANSWER:** Department incorporates and repeats its answers to Paragraphs 1 through 37 as if fully set forth herein.

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.

**ANSWER:** Paragraph 39 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of the case law quoted in Paragraph 39 and states that the case law speaks for itself. Department further states that the case law cited was an Order filed under Illinois Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23 (e) (1). Department denies the remaining factual allegations contained in Paragraph 39.

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.*

**ANSWER:** Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of the case law quoted in Paragraph 40 and states that the case law speaks for itself. Department further states that the case law cited was an Order filed under Illinois Supreme Court Rule 23 and may not be cited as precedent by any

party except in the limited circumstances allowed under Rule 23 (e) (1). Department denies that the issues addressed by the Court in *Con-Way* are relevant to these proceedings. Department denies any factual allegations contained in Paragraph 40 and demands strict proof thereof.

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.*

**ANSWER:** Paragraph 41 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of the case law quoted in Paragraph 41 and states that the case law speaks for itself. Department further states that the case law cited was an Order filed under Illinois Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23 (e) (1). Department further states that the return in question in *Con-Way* was filed during amnesty to report an anticipated federal change. Department denies that the decision in *Con-Way* in anyway precludes the Department from making appropriate adjustments. Department denies any factual allegations contained in Paragraph 41 and demands strict proof thereof.

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.

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

denies any factual allegations contained in Paragraph 42 and demands strict proof thereof.

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.

**ANSWER:** Any allegation of fact in Paragraph 43 is vague and contains undefined terms. To the extent an answer is required, the Department denies any factual allegations contained in Paragraph 43 and demands strict proof thereof.

44. Those changes resulted in an overpayment.

**ANSWER:** Department denies that the Taxpayer is entitled to the refund claimed on its IL-1120X Forms for tax years ending 1989, 1990 and 1991.

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

**ANSWER:** Paragraph 45 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department denies any remaining factual allegations contained in Paragraph 45 and demands strict proof thereof.

46. Accordingly, Petitioner is entitled to a refund.

**ANSWER:** Department denies Paragraph 46.

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

- a. deny each prayer for relief in Count III of the Taxpayer's Petition;
- b. find the Notice of Denial is correct as issued;
- c. order judgment in favor of the Department and against the Taxpayer; and
- d. grant such further relief as this Tribunal deems appropriate under the circumstances.

#### **COUNT IV**

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

**ANSWER:** Department incorporates and repeats its answers to Paragraphs 1 through 46 as if fully set forth herein.

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

**ANSWER:** Department admits Paragraph 48.

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

**ANSWER:** The Department admits that a Notice of Deficiency was issued to the Taxpayer and that the Taxpayer filed its protest within sixty days.

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)

**ANSWER:** Department denies the factual allegations in Paragraph 50 and states further that the matters addressed by the Appellate Court were unrelated to the inclusion of EOIC in the Taxpayer's unitary group.

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

**ANSWER:** Department denies the factual allegations in Paragraph 51 and demands strict proof thereof. Further, the Department denies that the prior audit adjudicated whether EOIC was properly excluded from the Taxpayer's unitary group.

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.

**ANSWER:** The Department admits that certain prior audit adjustments were upheld by the Appellate Court but those adjustments did not relate to EOIC. Department denies any the remaining allegations contained in Paragraph 52 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 53 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310 (b) (2). To the extent an answer is required, Department denies that it is precluded from making necessary

changes effecting the amount of refund due. Department denies any factual allegations contained in Paragraph 53 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 54 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of 35 ILCS §5/904(a) referred to in Paragraph 54 and states that such law speaks for itself. Department denies any factual allegations in Paragraph 54 and demands strict proof thereof.

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.*

**ANSWER:** Paragraph 55 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of 35 ILCS §5/904(a) referred to in Paragraph 55 and states that such law speaks for itself. Department denies any factual allegations contained in Paragraph 55 and demands strict proof thereof.

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.*

**ANSWER:** Paragraph 56 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of 35 ILCS §5/909 referred to in Paragraph 56 and states that such law speaks for itself. Department denies any factual allegations contained in Paragraph 56 and demands strict proof thereof.

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.

**ANSWER:** Department denies Paragraph 57 and demands strict proof thereof.

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

**ANSWER:** Department denies any factual allegations contained in Paragraph 58 and demands strict proof thereof. Department denies that the inclusion of EOIC in the Taxpayer’s unitary group was improper or that any changes to the amended returns must be related to the federal changes reported on the amended returns.

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.

**ANSWER:** Paragraph 59 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department denies any factual allegations contained in Paragraph 59 and demands strict proof thereof.

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

- a. deny each prayer for relief in Count IV of the Taxpayer's Petition;
- b. find the Notice of Denial is correct as issued;
- c. find and declare that the Department's inclusion of EOIC in Taxpayer's Illinois unitary group was proper;
- d. order judgment in favor of the Department and against the Taxpayer; and
- e. grant such further relief as this Tribunal deems appropriate under the circumstances.

#### **COUNT V**

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

**ANSWER:** Department incorporates and repeats its answers to Paragraphs 1 through 59 as if fully set forth herein.

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.

**ANSWER:** Department admits that the case law cited in Paragraph 61 supports its ability to reduce Taxpayer's refund claim. Department denies that the case law cited is the only relevant authority. Department denies the remaining factual allegations contained in Paragraph 61 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 62 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of the case law cited in Paragraph 62 and states that the case law speaks for itself. Department denies any factual allegations contained in Paragraph 62 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 63 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of the case law cited in Paragraph 63 and states that the case law speaks for itself. Department denies any factual allegations contained in Paragraph 63 and demands strict proof thereof.

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. § 6401. *Gordon v. United States*, 2009 U.S. Dist. LEXIS 115352, 28-29 (S.D. N.Y. 2009).

**ANSWER:** Paragraph 64 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of the case law and statute cited in Paragraph 64 and states that the case law and statute speak for themselves. Department denies any factual allegations contained in Paragraph 64 and demands strict proof thereof.

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

**ANSWER:** Department denies Paragraph 65.

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

- a. deny each prayer for relief in Count V of the Taxpayer's Petition;
- b. find the Notice of Denial is correct as issued;
- c. order judgment in favor of the Department and against the Taxpayer; and
- d. grant such further relief as this Tribunal deems appropriate under the circumstances.
- e.

## COUNT VI

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

**ANSWER:** Department incorporates and repeats its answers to Paragraphs 1 through 65 as if fully set forth herein.

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.

**ANSWER:** Department admits including EOIC in Taxpayer's Illinois unitary group and reducing the Taxpayer's claim for refund. Department denies the remaining factual allegations contained in Paragraph 67 and demands strict proof thereof.

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

**ANSWER:** Department admits it audited tax years 1989 through and including 1994. Department admits the audit, a settlement agreement and the Appellate Court decision were used in determining tax amounts determined to be due for the years listed in this answer. The Department denies that it is precluded from making further adjustments. Department denies the remaining factual allegations contained in Paragraph 68 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 69 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department denies any factual allegations contained in Paragraph 69 and demands strict proof thereof.

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)*

**ANSWER:** Any allegation of fact in Paragraph 70 is vague and contains undefined terms. To the extent an answer is required, the Department denies any factual allegations contained in Paragraph 70 and demands strict proof thereof.

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.

**ANSWER:** Any allegation of fact in Paragraph 71 is vague and contains undefined terms. To the extent an answer is required, the Department denies any factual allegations contained in Paragraph 71 and demands strict proof thereof.

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

**ANSWER:** Any allegation of fact in Paragraph 72 is vague and contains undefined terms. To the extent an answer is required, the Department denies any factual allegations contained in Paragraph 72 and demands strict proof thereof.

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

**ANSWER:** Paragraph 73 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of the case law cited in Paragraph 73 and states that the case law speaks for itself. Department denies any factual allegations contained in Paragraph 73 and demands strict proof thereof.

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).

**ANSWER:** Paragraph 74 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect of the case law cited in Paragraph 74 and states that the case law speaks for itself. Department denies any factual allegations contained in Paragraph 74 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 75 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department denies any factual allegations contained in Paragraph 75 and demands strict proof thereof.

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

- a. deny each prayer for relief in Count VI of the Taxpayer's Petition;
- b. find the Notice of Denial is correct as issued;
- c. find that the Department's adjustment to Taxpayer's Illinois unitary group to include EOIC was appropriate;
- d. order judgment in favor of the Department and against the Taxpayer; and
- e. grant such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

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