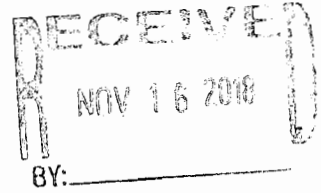


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

SAZERAC COMPANY INC.,)
)
 Petitioner,)
)
 v.) No.
)
 THE ILLINOIS DEPARTMENT OF REVENUE,)
)
 Defendant.)



VERIFIED PETITION

Petitioner, Sazerac Company Inc. (“Petitioner”), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

PARTIES

1. For the tax years ending June 30, 2012 and June 30, 2013 (“Years in Issue”), Petitioner was, and currently is a Louisiana corporation whose principal business address was 3850 N. Causeway Blvd., Suite 1695, Metairie, LA 70002-8177.
2. Petitioner is qualified to conduct business in Illinois and is currently in good standing.
3. Petitioner is represented by Fred O. Marcus, David W. Machermer, and Samantha K. Breslow of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3210 or fmarcus@hmblaw.com; 312-242-3302 or dmachermer@hmblaw.com; and 312-606-3206 or sbreslow@hmblaw.com, respectively.
4. Petitioner’s FEIN is 72-0310180.
5. Petitioner is the parent company of Sazerac North America, Inc. (“SNA”).

6. SNA is headquartered in Louisville, Kentucky and is engaged in the sale and distribution of distilled spirits.

7. Petitioner is the designated agent for a unitary group of affiliates that files Illinois corporate income and replacement tax returns on a combined basis that includes SNA.

8. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

NOTICES

9. On October 19, 2018, the Department issued two Notices of Deficiency (“Notices”) for tax, penalties, and interest totaling \$228,312.59 for the Years in Issue. The Notices are attached hereto as Exhibits A and B, respectively. Unless otherwise stated, the following paragraphs relate to the Years in Issue.

JURISDICTION

10. 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 and the Illinois Income Tax Act (“Income Tax Act”), 35 ILCS 5/101 et. seq.

11. 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

12. Petitioner and its unitary affiliates timely filed combined Illinois corporate income and replacement tax returns for the Years in Issue.

13. One of Petitioner’s unitary affiliates that was included in its combined income tax returns for the Years in Issue was SNA.

14. SNA manufactured a line of distilled spirits from its facilities in Kentucky and distributed its manufactured distilled spirits and additional brands of distilled spirits it owned from its Kentucky facility throughout the United States, including Illinois. SNA is incorporated under the laws of Delaware and maintains its principal place of business in Louisville, Kentucky.

15. On its returns for the Years in Issue, Petitioner excluded SNA's Illinois gross receipts from the numerator of its combined sales factor because SNA activities in Illinois were limited to mere solicitation and within the meaning of P.L. 86-272 (15 U.S.C. Sec. 381 et seq.).

16. The Department audited Petitioner for the Years in Issue and issued the Notices on October 19, 2018.

17. The Department determined that SNA was subject to Illinois' taxing jurisdiction and included SNA's Illinois receipts in the numerator of Petitioner's combined Illinois sales factor, resulting in the tax deficiency in issue.

COUNT I

Public Law 86-272 Precludes the Department from Including SNA's Illinois Receipts in the Numerator of Petitioner's Combined Illinois Sales Factor

18. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 17, inclusive, hereinabove.

19. P.L. 86-272 provides that an out-of-state seller of tangible personal property is not subject to a state's net income tax if the seller's only connection with the state is the solicitation of orders, which are sent outside the state for acceptance or rejection and, if accepted, are filled by shipment or delivery from a point outside the state.

20. SNA distributed distilled spirits manufactured at its Kentucky facility and distilled spirits it purchased from Barton Brands of California, also a member of Petitioner's Illinois

unitary business group, through third-party wholesalers and retailers throughout the United States, including Illinois.

21. SNA does not maintain an office, warehouse, storage facility, sample room or any other place of business in Illinois.

22. SNA does not own, maintain, or lease any real, tangible, or personal property located in Illinois.

23. SNA employees carry supplies and other equipment in Illinois which they use in their solicitation activities.

24. SNA employees do not resolve customer complaints and nor do they do any investigating of complaints in Illinois.

25. SNA employees send all complaints and disputes to its home office in Louisville, Kentucky.

26. SNA employees do not replace damaged items in customers' displays or inventory in Illinois.

27. SNA employees do not receive purchase orders from customers in Illinois.

28. Purchase orders are sent outside Illinois for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside Illinois.

29. SNA employees do not accept returned merchandise in Illinois.

30. SNA employees do not make repairs or provide maintenance service to the property sold in Illinois.

31. SNA maintained an Illinois lock-box at Wachovia National Bank (now Wells Fargo) to which SNA's customers remitted payments for their SNA purchases.

32. Neither SNA employees nor Wachovia National Bank collect current or delinquent accounts in Illinois.

33. SNA employees do not investigate customers' credit worthiness in Illinois.

34. SNA employees do not repossess property in Illinois.

35. SNA employees do not secure deposits on sales in Illinois.

36. SNA employees do not replace damaged items in customers' displays or inventory in Illinois.

37. SNA's presence in Illinois during the Years in Issue was limited to employees who worked out of their Illinois homes and whose activity was limited to the solicitation of orders of tangible personal property and activities ancillary to solicitation under P.L. 86-272 and the ruling in *Wisconsin Department of Revenue v. Wrigley*, 505 U.S. 214 (1992).

38. SNA is exempt from net income tax under P.L. 86-272 and, as a result, its Illinois receipts may not be included in the numerator of Petitioner's combined Illinois sales factor.

39. The Department's modification to Petitioner's Illinois sales factor and resulting Illinois apportioned income was in error.

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

- (a) finds and declares that SNA is not subject to the income tax jurisdiction of Illinois;
- (b) finds and declares that SNA's Illinois receipts may not be included in the numerator of Petitioner's combined Illinois sales factor;
- (c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw its Notices; and

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

Respectfully submitted,

SAZERAC COMPANY INC.

Petitioner

By: 
_____ One of Petitioner's Attorneys

Fred O. Marcus (fmarcus@hmblaw.com)
David W. Macheimer (dmacheimer@hmblaw.com)
Samantha K. Breslow (sbreslow@hmblaw.com)
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, IL 60661
(312) 606-3200

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served by electronic mail and by enclosing the same in an envelope, properly addressed, first-class postage prepaid and deposited in the US Mail at 500 West Madison Street, Chicago, Illinois, 60661, before the hour of 5:00 p.m. on the 16th day of November, 2018.

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



EXHIBIT A

Notice of Deficiency

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



October 19, 2018



Letter ID: CNXXXX2554512488

Taxpayer ID: 72-0310180

Audit ID: A592377856

Reporting period: June 2012

Total Deficiency: \$92,132.98

Balance due: \$92,132.98

#BWNKMGV
#CNXX XX25 5451 2488#
SAZERAC COMPANY INC
ATTN: ANGIE MONAHAN

3815 RIVER CROSSING PKWY STE 300

INDIANAPOLIS IN 46240-7767

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

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

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

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

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

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

Sincerely,

Constance Beard
Director

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

(217) 785-6711

cc: A Monahan - 3815 River Crossing Pkwy Ste 300
Indianapolis IN 46240

L Thompson & K Yocom - 9600 Brownsboro Rd Ste 400
Louisville KY 40241

Statement

Date: October 19, 2018
Name: SAZERAC COMPANY INC
Taxpayer ID: 72-0310180
Letter ID: CNXXXX2554512488

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

Computation of deficiency

Reporting period: 30-Jun-2012

Income or loss	
Federal taxable income	\$33,910,391.00
Net operating loss deduction	\$0.00
Income tax and replacement tax deduction	\$33,876.00
Illinois bonus depreciation addition	\$3,589,006.00
Other additions	\$0.00
Base income or loss	
Illinois bonus depreciation subtraction	\$1,438,858.00
Total subtractions	\$1,438,858.00
Base income or net loss	\$36,094,415.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$6,609.00
Business income or loss	\$36,087,806.00
Apportionment formula	
Total sales everywhere	\$1,106,129,000.00
Total Illinois sales	\$35,355,576.00
Apportionment factor	0.031964
Business income/loss apportionable to IL	\$1,153,511.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$0.00
Base income or net loss allocable to IL	\$1,153,511.00
Net income	
Base income or net loss	\$1,153,511.00
IL net loss deduction (NLD)	\$0.00
Net income	\$1,153,511.00
Net replacement tax	
Replacement tax	\$28,838.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$28,838.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$28,838.00
Net income tax	
Income tax	\$80,746.00
Recapture of investment credits	\$0.00
Income tax before credits	\$80,746.00

Explanation of Audit Adjustments

Income Tax



October 19, 2018



Letter ID: CNXXX16844X952X7

Taxpayer ID: 72-0310180

Account ID: 07589-81632

Audit ID: A592377856

Reporting period: June 2012

#BWNKMGV
#CNXX X168 44X9 52X7#
SAZERAC COMPANY INC
ATTN: ANGIE MONAHAN
3815 RIVER CROSSING PKWY STE 300
INDIANAPOLIS IN 46240-7767

Explanation of adjustments for tax period ending 06/30/2012

	<u>Return Impact</u>	<u>Tax impact</u>
We adjusted your addition modifications to reflect the correct addback of the federal bonus depreciation, or the correct reversal of the Illinois depreciation for bonus depreciation assets in the last year you are allowed a federal depreciation deduction, as required to be shown on the Form IL-4562. [35 ILCS 5/203(b)(2)(E-10), (b)(2)(E-11), (c)(2)(G-10), (c)(2)(G-11), (d)(2)(D-5), (d)(2)(D-6)]	\$3,589,006.00	\$3,310.00
We adjusted your addition modifications to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203(h)]	-\$123,875.00	-\$114.00
We adjusted your subtraction modifications to reflect the correct amount of Illinois depreciation related to bonus depreciation, assets, and the reversal of the bonus depreciation addback for an asset in the last year you are allowed a federal depreciation deduction for that asset, as required to be shown on Form IL-4562. [35 ILCS 5/203(b)(2)(T), (c)(2)(R), (d)(2)(O)]	\$1,438,858.00	-\$1,327.00
We adjusted the amount of your trust, estate, and non-unitary partnership income allocable to Illinois to reflect the apportionment of that income by the trust, estate, or partnership. [35 ILCS 5/305, 306]	\$6,609.00	-\$6.00
We adjusted your sales factor to include all business receipts on federal 1120, Lines 1 through 10, to the extent not expressly excluded from the sales factor. [86 IL Adm. Code 100.3370(a)(1)]	-\$47,744,073.00	\$4,536.00
We adjusted your sales factor to include in the numerator sales destined Illinois from members of the unitary group determined to have nexus with Illinois. [35 ILCS 5/304(a)(3)(B)(i)]	\$24,153,941.00	\$71,765.00
Interest on tax and penalty, if applicable, has been computed as allowed by Illinois law. [35 ILCS 735/3-2]		

EXHIBIT B

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



October 19, 2018



Letter ID: CNXXX1X798368485

#BWNKMGV
#CNXX X1X7 9836 8485#
SAZERAC COMPANY INC
ATTN: ANGIE MONAHAN
3815 RIVER CROSSING PKWY STE 300
INDIANAPOLIS IN 46240-7767

Taxpayer ID: 72-0310180
Audit ID: A592377856
Reporting period: June 2013
Total Deficiency: \$136,179.61
Balance due: \$136,179.61

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

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

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

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

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

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

Sincerely,

Constance Beard
Director

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

(217) 785-6711

cc: A Monahan - 3815 River Crossing Pkwy Ste 300
Indianapolis IN 46240

L Thompson & K Yocom - 9600 Brownsboro Rd Ste 400
Louisville KY 40241

Statement

Date: October 19, 2018
Name: SAZERAC COMPANY INC
Taxpayer ID: 72-0310180
Letter ID: CNXXX1X798368485

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

Computation of deficiency

Reporting period: 30-Jun-2013

Income or loss	
Federal taxable income	\$50,757,479.00
Net operating loss deduction	\$644,196.00
Income tax and replacement tax deduction	\$46,142.00
Illinois bonus depreciation addition	\$8,767,568.00
Other additions	\$0.00
Base income or loss	
Illinois bonus depreciation subtraction	\$2,985,654.00
Total subtractions	\$2,985,654.00
Base income or net loss	\$57,229,731.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$1,062,414.00
Business income or loss	\$56,167,317.00
Apportionment formula	
Total sales everywhere	\$1,302,653,802.00
Total Illinois sales	\$41,191,987.00
Apportionment factor	0.031621
Business income/loss apportionable to IL	\$1,776,067.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$0.00
Base income or net loss allocable to IL	\$1,776,067.00
Net income	
Base income or net loss	\$1,776,067.00
IL net loss deduction (NLD)	\$0.00
Net income	\$1,776,067.00
Net replacement tax	
Replacement tax	\$44,402.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$44,402.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$44,402.00
Net income tax	
Income tax	\$124,325.00
Recapture of investment credits	\$0.00
Income tax before credits	\$124,325.00

Explanation of Audit Adjustments

Income Tax



October 19, 2018



Letter ID: CNXXX17132497448

Taxpayer ID: 72-0310180

Account ID: 07589-81632

Audit ID: A592377856

Reporting period: June 2013

#BWNKMGV

#CNXX X171 3249 7448#
SAZERAC COMPANY INC
ATTN: ANGIE MONAHAN
3815 RIVER CROSSING PKWY STE 300
INDIANAPOLIS IN 46240-7767

Explanation of adjustments for tax period ending 06/30/2013

	<u>Return Impact</u>	<u>Tax impact</u>
We adjusted your addition modifications to reflect the correct addback of the federal bonus depreciation, or the correct reversal of the Illinois depreciation for bonus depreciation assets in the last year you are allowed a federal depreciation deduction, as required to be shown on the Form IL-4562. [35 ILCS 5/203(b)(2)(E-10), (b)(2)(E-11), (c)(2)(G-10), (c)(2)(G-11), (d)(2)(D-5), (d)(2)(D-6)]	\$8,767,568.00	\$8,920.00
We adjusted your subtraction modifications to reflect the correct amount of Illinois depreciation related to bonus depreciation, assets, and the reversal of the bonus depreciation addback for an asset in the last year you are allowed a federal depreciation deduction for that asset, as required to be shown on Form IL-4562. [35 ILCS 5/203(b)(2)(T), (c)(2)(R), (d)(2)(O)]	\$2,985,654.00	-\$3,037.00
We adjusted the amount of your trust, estate, and non-unitary partnership income allocable to Illinois to reflect the apportionment of that income by the trust, estate, or partnership. [35 ILCS 5/305, 306]	\$1,062,414.00	-\$1,081.00
We adjusted your sales factor to include all business receipts on federal 1120, Lines 1 through 10, to the extent not expressly excluded from the sales factor. [86 IL Adm. Code 100.3370(a)(1)]	-\$30,748,097.00	\$3,890.00
We adjusted your sales factor to include in the numerator sales destined Illinois from members of the unitary group determined to have nexus with Illinois. [35 ILCS 5/304(a)(3)(B)(i)]	\$26,912,012.00	\$107,694.00
Interest on tax and penalty, if applicable, has been computed as allowed by Illinois law. [35 ILCS 735/3-2]		