

NOTICES

6. On November 3, 2017, the Department issued to Petitioner a Notice of Claim Denial for the Illinois corporate income and replacement tax (“Income Tax”) periods ending March 31, 2010 and March 31, 2011. On January 17, 2019, the Department issued to Petitioner Notices of Claim Denial (“Notices”) for the Illinois Income Tax periods ending March 31, 2013 and March 31, 2014. Income Tax periods ending March 31, 2010, March 31, 2011, March 31, 2013, and March 31, 2014, are referred to collectively herein as the “Years at Issue.”

7. The Notices denied Petitioner’s Income Tax refund claims for the Years at Issue as described more fully herein.

8. True and accurate copies of the Notices are attached hereto as **Exhibit A**.

JURISDICTION

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

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

FACTUAL BACKGROUND

11. Nissan North America (“NNA”) is a manufacturer of Nissan-branded automobiles in the United States.

12. NNA’s Nissan-branded automobiles are sold for resale to independent, third-party dealers (individually, a “Nissan Dealer,” and collectively, the “Nissan Dealers”) located throughout the United States.

13. Nissan Motor Acceptance Corporation (“NMAC”) is a wholly-owned subsidiary of NNA.

14. NMAC provides two forms of financing by: (1) purchasing consumer loans from Nissan Dealers, which originate the loans when selling Nissan-branded automobiles to consumers; and (2) extending credit and making direct advances to Nissan Dealers for purchases of Nissan-branded automobiles from NNA.

15. In connection with its financing business, NMAC owns a number of bankruptcy remote special purpose entities, including NARC, Nissan Auto Receivables Finance, Inc. (“NARF”) and Nissan Wholesale Receivables Corporation II (“NWRC”). NARC, NARF and NWRC will be referred to singularly as an “SPE” and collectively as the “SPEs”.

16. During the Years at Issue, the SPEs had their fixed places of business in Tennessee.

17. The SPEs did not have a fixed place of business in Illinois.

18. NNA and NMAC were registered to do and doing business in Illinois during the Years at Issue.

Origination of Consumer Loans

19. Many purchasers of Nissan-branded automobiles choose to finance their purchase through a Nissan Dealer by means of a retail installment sale contract (singularly, a “Consumer Loan” and collectively, “Consumer Loans”).

20. When a consumer chooses to finance a purchase of a Nissan-branded automobile through a Nissan Dealer, the Nissan Dealer solicits, negotiates and originates the Consumer Loan in the form of a retail installment sale contract.

21. After a Consumer Loan has been originated by a Nissan Dealer, the Nissan Dealer will typically sell the loan to a finance company, including NMAC, pursuant to a pre-existing agreement.

22. Approximately one-half of all Consumer Loans originated by Nissan Dealers during the Years at Issue were sold to NMAC. The remaining Consumer Loans originated by Nissan Dealers during the Years at Issue were sold to competitors of NMAC.

23. NMAC maintains agreements with Nissan Dealers that set forth the terms, advance rates, and origination fees associated with the Consumer Loans.

24. Once NMAC purchases a Consumer Loan from a Nissan Dealer, NMAC funds the loan and secures the loan with a first-priority security interest in the underlying Nissan-branded automobile. NMAC's name appears on the automobile's title as lien holder, but NMAC does not own the automobile.

Origination of Wholesale Loans

25. NMAC offers Nissan Dealers financing via wholesale "floorplan" loans, which provide a revolving line of credit to purchase Nissan-branded automobiles from NNA (singularly, a "Wholesale Loan," and collectively, "Wholesale Loans").

26. Each receivable generated pursuant to a Wholesale Loan is secured by a first-priority security interest in the Nissan-branded automobile(s) purchased by the Nissan Dealer.

27. A Wholesale Loan may also be secured by other assets and/or guarantees by a Nissan Dealer.

28. When the Nissan Dealer resells the secured Nissan-branded automobile to a consumer, NMAC is entitled to a repayment of the related receivable and NMAC's security interest in the automobile is terminated.

NMAC's Securitization Process

29. NMAC's credit rating places restrictions on the amount of capital it may raise and its cost of funds.

30. NMAC established the SPEs as wholly-owned, bankruptcy-remote subsidiaries to facilitate the securitization of Consumer Loans and Wholesale Loans through offerings arranged by third-party underwriters. These arrangements are commonly referred to as "asset backed securitizations."

31. By securitizing the Consumer Loans and Wholesale Loans, NMAC is able to raise capital without reference to its credit rating limitations and obtain capital at a lower cost than in other forms of financing.

32. To securitize the loans, NMAC sells pools of Consumer Loans to NARC and NARF and revolving pools of receivables from Wholesale Loans to NWRC.

33. The sales by NMAC of pools of Consumer Loans and Wholesale Loans occur approximately two to four times per year, based on NMAC's cash requirements.

34. NMAC's sale of Consumer Loans and receivables from Wholesale Loans are legally binding, arm's length sales and are respected as such for federal income tax and bankruptcy purposes.

35. After purchasing a pool of loans or receivables, NARC and NWRC convey the pool and the underlying security interests to a Delaware statutory trust ("Trust"). NARF engages in private securitizations with a financial institution.

36. In addition to conveying the pool of loans or receivables, the NARC and NWRC will also provide the Trust with the right to proceeds from insurance policies covering the financed property or customers, NMAC's right to recourse, NARC and NWRC's rights in specified

agreements, and NARC and NWRC's rights to rebates of premiums and other amounts relating to insurance policies and other items financed under the loans.

37. The Trust will issue notes ("Notes") and certificates to the SPE. The Notes are debt obligations, and the certificates represent the SPE's fractional undivided ownership interest in the Trust.

38. The SPE will then sell the Notes to third-party investors in exchange for cash.

39. The issuance of the Notes by the Trust and subsequent sale by the SPE is treated as an issuance of debt for federal income tax purposes.

40. The SPE retains the Trust certificates, which are subordinated to the Notes.

41. At the time the Trust issues the Notes, the SPE funds a reserve account, which is used to cover shortfalls in interest and principal payments that the SPE must make on the Notes.

42. The SPE may also fund a yield supplement account to raise the interest rate on the Notes if the underlying loans have been made at below-market rates and a higher interest rate is required for securitization.

43. Consumer Loans generate income streams consisting of regular monthly payments (interest and principal), prepayments, insurance proceeds, and cash from automobiles that have been auctioned.

44. Wholesale Loans generate interest and principal income streams that are deposited into a collections account.

45. Proceeds from the loans are distributed by the Trust in the following order: (1) payments of a servicing fee to NMAC for servicing the loans, as discussed herein; (2) interest payments on the Notes to investors; (3) principal payments on the Notes to investors; (4) payments

to maintain the reserve and/or yield account; and (5) payments on the Trust certificates to the SPE. The SPE receives all remaining funds.

46. Although the payments on the loans are sent to NMAC as the servicing company, the SPE recognizes the interest income for federal income tax purposes.

Servicing of Loans

47. NMAC enters into a Service Agreement with each SPE and Trust wherein NMAC is contracted to service the loans and receivables owned by the Trust (the “Service Agreement”).

48. The Service Agreement is a standard market-rate contract.

49. The servicing activities conducted by NMAC under the Service Agreement include: (1) mailing monthly statements to borrowers; (2) collecting, allocating, and reconciling monthly payments (including interest and principal payments on the Trust notes to investors); (3) releasing liens and sending title to customers when loans are paid off; (4) collection activities; (5) engaging third-parties to repossess automobiles; and (6) various loss recovery activities (*i.e.*, deficiency recovery, collateral recovery, and bankruptcy recovery).

50. As to loans and receivables secured by property located in Illinois, NMAC’s servicing activities take place wholly outside of Illinois.

51. NMAC may, on occasion, engage a third-party for repossession, collateral recovery and bankruptcy recovery activities.

52. Any repossession and recovery activities are *de minimis*.

The SPEs are not Physically Present in Illinois and did not Direct Activities to Illinois

53. During the Years at Issue, none of the SPEs had any employees in Illinois.

54. During the Years at Issue, none of the SPEs maintained any offices in Illinois.

55. During the Years at Issue, none of the SPEs owned any property in Illinois.

56. During the Years at Issue, none of the SPEs performed any services for customers in Illinois.

57. During the Years at Issue, none of the SPEs solicited Illinois residents or targeted activities towards them.

58. During the Years at Issue, none of the SPEs had any relationship with Nissan Dealers in Illinois.

59. During the Years at Issue, none of the SPEs participated in the origination of Consumer Loans or Wholesale Loans and did not specify which pools of loans to purchase from NMAC.

60. During the Years at Issue, none of the SPEs purposefully target Illinois or directed any activity to Illinois.

61. During the Years at Issue, no employee of the SPEs physically entered Illinois.

62. During the Years at Issue, no services were performed by the SPEs in Illinois.

63. During the Years at Issue, the SPEs did not have an agent or representative in Illinois.

PROCEDURAL BACKGROUND

64. NARC, as the designated agent for the unitary business group of financial organizations consisting of NARC, NARF and NWRC, timely filed Income Tax returns with the Department for each of the Years at Issue (“Original Returns”) reporting income apportioned to and taxable by Illinois.

65. NMAC is a member of the NNA unitary business group. NMAC is not a member of the NARC unitary business group because it is not a financial organization for Income Tax purposes.

66. NARC paid the Income Tax reported to be due on the Original Returns in addition to estimated payments previously paid to the Department.

67. After NARC determined that no member of its unitary group, *i.e.*, the SPEs, had nexus with Illinois for any of the Years at Issue, NARC filed amended Income Tax returns on or about December 21, 2016, for each of the Years at Issue (the “Amended Returns”) to reflect that each member of the NARC combined group was not subject to Income Tax and, in fact, was due a refund of Income Tax erroneously paid for each of the Years at Issue in the aggregate amount of \$1,068,732 (the “Refund Amount”) plus interest as provided by law.

68. The Department audited NARC for the Years at Issue as well as NARC’s tax year ending March 31, 2012.

69. Pursuant to the Audit, on January 17, 2019, the Department issued the Notices to NARC, denying in its entirety NARC’s claim for refund of the Refund Amount.

70. NARC now timely appeals the Notices to this Tribunal pursuant to the Tribunal Act.

APPLICABLE LAW

71. Income Tax is imposed on corporations for the privilege of earning or receiving income in Illinois. 35 ILCS § 5/201(a).

72. A non-resident entity must have a physical presence in Illinois which is substantial and related to the manner in which its receipts are generated in Illinois. 86 Ill. Admin. Code § 100.9720.

73. The Commerce Clause of the United States Constitution provides that “[t]he Congress shall have Power . . . [t]o regulate Commerce . . . among the several States.” U.S. Const. Art. I, § 8, cl. 3.

74. The Due Process Clause of the United States Constitution provides that “no[] . . . State [shall] deprive any person of life, liberty, or property without due process of law.” U.S. Const. Amend. 14, § 1.

75. If the allocation and apportionment provisions of 35 ILCS § 5/304(a) through (e) and (h) do not “fairly represent the market for the person’s goods, services, or other sources of business income” the person may be entitled to (1) separate accounting; (2) the exclusion of any one or more factors; (3) the inclusion of one or more additional factors which will fairly represent the person’s business activities or market in this State; or (4) the employment of any other method to effectuate an equitable allocation and apportionment of the person’s business income. *See* 35 ILCS § 5/304(f).

COUNT ONE

NONE OF THE SPEs HAD STATUTORY NEXUS WITH ILLINOIS

76. NARC realleges and reincorporates the allegations in paragraphs 1 through 755, inclusive, hereinabove.

77. Income Tax is imposed on corporations earning or receiving income from Illinois. 35 ILCS § 5/201; 86 Ill. Admin. Code § 100.9720.

78. In determining whether the activity of a nonresident taxpayer is sufficient to create nexus for application of Income Tax, “the principles established in *Appeal of Joyce Inc.*, Cal. St. Bd. of Equal. (11/23/66), commonly known as the ‘Joyce Rule,’ shall apply.” 86 Ill. Admin. Code § 100.9720(f).

79. Activity conducted by any other person, whether or not affiliated with the nonresident taxpayer, shall not be considered attributable to the taxpayer unless the other person was acting in a representative capacity on behalf of the taxpayer. *Id.*

80. None of the SPEs are Illinois corporations.

81. During the Years at Issue, none of the SPEs had any physical presence in Illinois.

82. During the Years at Issue, none of the SPEs engaged in business activities within Illinois.

83. During the Years at Issue, none of the SPEs had any agents or representatives acting on their behalf in Illinois.

84. None of the SPEs had any connection with the State of Illinois that would subject the SPEs to Illinois Income Tax.

85. The Department's denial of NARC's claim for refund of Income Tax for the Years at Issue is improper and erroneous and the entire Refund Amount must be refunded to NARC plus interest as provided by law.

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

- (a) finds and declares that each of the SPEs lacked nexus with Illinois for the Years at Issue under Illinois law;
- (b) enters judgment in favor of NARC and against the Department and orders the Department to grant NARC a refund of the entire Refund Amount plus interest as provided by law; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT TWO

IMPOSITION OF INCOME TAX ON THE SPEs VIOLATES THE COMMERCE CLAUSE

86. NARC realleges and reincorporates the allegations in paragraphs 1 through 85, inclusive, hereinabove.

87. The Commerce Clause of the United States Constitution provides that “[t]he Congress shall have Power . . . [t]o regulate Commerce . . . among the several States.” U.S. Const. Art. I, § 8, cl. 3.

88. The Commerce Clause prohibits discrimination against any burdens on the interstate flow of articles of commerce. *See Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 164 (1983).

89. A state tax imposed on out-of-state entities will survive scrutiny under the Commerce Clause only if: (1) there is a substantial nexus between the out-of-state entity and the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate; and (4) the tax is fairly related to the services provided by the state. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

90. During the Years at Issue, none of the SPEs had any employees in Illinois.

91. During the Years at Issue, none of the SPEs maintained any offices in Illinois.

92. During the Years at Issue, none of the SPEs owned any property in Illinois.

93. During the Years at Issue, none of the SPEs performed any services for customers in Illinois.

94. During the Years at Issue, none of the SPEs solicited Illinois residents or targeted activities towards them.

95. During the Years at Issue, none of the SPEs had any relationship with Nissan Dealers located in Illinois.

96. During the Years at Issue, none of the SPEs participated in the origination of Consumer Loans or Wholesale Loans and did not specify which pools of loans to purchase from NMAC.

97. During the Years at Issue, none of the SPEs purposefully targeted Illinois or directed any activity to Illinois.

98. During the Years at Issue, no employee of the SPEs physically entered Illinois.

99. During the Years at Issue, no services were performed by the SPEs in Illinois.

100. During the Years at Issue, the SPEs did not have an agent or representative in Illinois.

101. None of the SPEs had any connection with the State of Illinois that constitutes “substantial nexus” under the Commerce Clause and the *Complete Auto* decision.

102. The imposition of Income Tax on the SPEs for the Years at Issue violates the Commerce Clause.

103. The Department’s denial of NARC’s claim for refund of Income Tax for the Years at Issue is improper and erroneous and the entire Refund Amount must be refunded to NARC plus interest as provided by law.

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

- (a) finds and declares that the imposition of Income Tax on the SPEs for the Years at Issue is in violation of the Commerce Clause;
- (b) enters judgment in favor of NARC and against the Department and orders the Department to grant NARC a refund of the entire Refund Amount plus interest as provided by law; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT THREE

IMPOSITION OF INCOME TAX ON THE SPEs VIOLATES THE DUE PROCESS CLAUSE

104. NARC realleges and reincorporates the allegations in paragraphs 1 through 103, inclusive, hereinabove.

105. The Due Process Clause of the United States Constitution provides that “no[] . . . State [shall] deprive any person of life, liberty, or property without due process of law.” U.S. Const. Amend. 14, § 1.

106. For a State to tax income generated in interstate commerce, the Due Process Clause of the Fourteenth Amendment imposes two requirements: a “minimal connection” between the interstate activities and the taxing State and a rational relationship between the income attributed to the State and the intrastate values of the enterprise. *Mobil Oil Corp. v. Comm’r of Taxes*, 445 U.S. 425, 436-437 (1980).

107. During the Years at Issue, none of the SPEs had any employees in Illinois.

108. During the Years at Issue, none of the SPEs maintained any offices in Illinois.

109. During the Years at Issue, none of the SPEs owned any property in Illinois.

110. During the Years at Issue, none of the SPEs performed any services for customers in Illinois.

111. During the Years at Issue, none of the SPEs solicited Illinois residents or targeted activities towards them.

112. During the Years at Issue, none of the SPEs had any relationship with Nissan Dealers located in Illinois.

113. During the Years at Issue, none of the SPEs participated in the origination of Consumer Loans or Wholesale Loans and did not specify which pools of loans to purchase from NMAC.

114. During the Years at Issue, none of the SPEs purposefully targeted Illinois or directed any activity to Illinois.

115. During the Years at Issue, no employee of the SPEs physically entered Illinois.

116. During the Years at Issue, no services were performed by the SPEs in Illinois.

117. During the Years at Issue, the SPEs did not have an agent or representative in Illinois.

118. None of the SPEs have the minimum connection with the State of Illinois to be subject to Income Tax and there is no rational relationship between the income the Department contends is attributable to the state and the intrastate value of the SPEs.

119. The imposition of Income Tax on the SPEs for the Years at Issue violates the Due Process Clause.

120. The Department's denial of NARC's claim for refund of Income Tax for the Years at Issue is improper and erroneous and the entire Refund Amount must be refunded to NARC plus interest as provided by law.

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

- (a) finds and declares that the imposition of Income Tax on the SPEs for the Years at Issue violates the Due Process Clause;
- (b) enters judgment in favor of NARC and against the Department and orders the Department to grant NARC a refund of the entire Refund Amount plus interest as provided by law; and

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

COUNT FOUR

ALTERNATIVELY, EVEN IF THE SPEs HAD NEXUS WITH ILLINOIS, THEIR RECEIPTS SHOULD BE SOURCED TO THEIR FIXED PLACE OF BUSINESS

121. NARC realleges and reincorporates the allegations in paragraphs 1 through 120, inclusive, hereinabove.

122. The Illinois Income Tax Act provides that with respect to financial organizations, income from investment assets and activities should be sourced to the state in which the investment activities or assets are assigned to a fixed place of business. 35 ILCS 5/304(c)(3)(viii)(2)(A).

123. Investment assets and activities include, but are not limited to, investment securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, among many other activities. 35 ILCS 5/304(c)(3)(viii)(1).

124. The SPEs' investment in the receivables generated by NMAC constitute investment assets and activities and the income from those assets and activities should be sourced to the state in which the investment assets and activities were assigned to a fixed place of business.

125. None of the SPEs had a fixed place of business in Illinois.

126. Because the SPEs were engaged in investment activity in securities and none of the SPEs had a fixed place of business in Illinois, their receipts should have been excluded from the numerator of Petitioner's Illinois apportionment factor.

WHEREFORE, Plaintiff prays that the Court enter an Order that:

- a) finds and declares that the Notices are erroneous because the SPEs' receipts should have been excluded from the numerator of the Illinois sales factor;
- b) finds and declare the Notices invalid;

- c) enters judgment in favor of Petitioner and orders Defendants to issue Petitioner a refund; and
- d) grants such further relief as the Court deems appropriate under the circumstances.

COUNT FIVE

ALTERNATIVELY, PETITIONER IS ENTITLED TO ALTERNATIVE APPORTIONMENT

127. NARC realleges and reincorporates the allegations in paragraphs 1 through 126, inclusive, hereinabove.

128. If the allocation and apportionment provisions of 35 ILCS § 5/304(a) through (e) and (h) do not “fairly represent the market for the person’s goods, services, or other sources of business income” the person may be entitled to (1) separate accounting; (2) the exclusion of any one or more factors; (3) the inclusion of one or more additional factors which will fairly represent the person’s business activities or market in this State; or (4) the employment of any other method to effectuate an equitable allocation and apportionment of the person’s business income. *See* 35 ILCS § 5/304(f).

129. To the extent one or more of the SPEs has Income Tax nexus with Illinois for the Years at Issue, the method for allocating and apportioning the SPE’s income to Illinois does not fairly represent the market for the SPE’s sources of business income.

130. If the SPEs are found to have Income Tax nexus with Illinois for the Years at Issue, then they are entitled to alternative apportionment under 35 ILCS § 5/304(f).

131. The Department’s denial of NARC’s claim for refund of Income Tax for the Years at Issue is improper and erroneous and the entire amount of the Refund Amount must be refunded to NARC plus interest as provided by law.

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

- (a) finds and declares that to the extent an SPE is found to have Income Tax nexus with Illinois for the Years at Issue, then the Department must use an alternative formula to apportion the SPE's business income;
- (b) enters judgment in favor of NARC and against the Department and orders the Department to grant NARC a refund of the entire Refund Amount plus interest as provided by law; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT SIX

**NARC IS ENTITLED TO A REFUND OF ALL PENALTIES
PAID FOR THE YEARS AT ISSUE**

132. NARC realleges and reincorporates the allegations in paragraphs 1 through 131, inclusive, hereinabove.

133. On its Original Return for the tax year ending March 31, 2012 ("2012 tax year"), NARC reported a net loss with no tax due and estimated tax payments of \$773,000, resulting in an overpayment of \$773,000.

134. Contrary to its usual practice, NARC did not carry forward the overpayment of \$773,000 to the following tax year ending March 31, 2013.

135. NARC instead requested a refund of the overpayment of \$773,000.

136. NARC timely filed its Original Return for the tax year ended March 31, 2013 ("2013 tax year") on the extended due date of January 15, 2014.

137. On its Original Return for the 2013 tax year, NARC carried forward and applied the overpayment of \$773,000 from the 2012 tax year because the Department had not refunded that overpayment at the time NARC filed its 2013 Original Return.

138. NARC contacted the Department about the refund check for the 2012 overpayment of \$773,000.

139. The Department informed NARC that it had issued a refund check to NARC in the amount of \$773,000 on or about June 28, 2013.

140. NARC never received the original refund check.

141. On July 8, 2014, NARC wrote to the Department and requested a replacement check.

142. On or about August 13, 2014, the Department issued a replacement refund check in the amount of \$773,000, which NARC received and deposited on August 19, 2014.

143. On its Original Return for the 2013 tax year, NARC reported tax of \$430,851 and an overpayment credit of \$773,000, resulting in an overpayment of \$342,149 for the 2013 tax year which NARC then carried forward to the following tax year ending March 31, 2014.

144. On March 3, 2014, the Department issued a Return Correction Notice and Account Notice for the 2013 tax year (“Return Correction Notice”).

145. Pursuant to the Return Correction Notice, the Department changed NARC’s prior year overpayment from \$773,000 to zero, resulting in an unpaid tax liability of \$430,851, penalties of \$43,085 and interest of \$2,196.

146. After NARC received the Return Correction Notice for the 2013 tax year, it realized that the Department would disallow the overpayment credit of \$342,149 from its 2013 tax year and it accordingly made a \$600,000 estimated payment on June 13, 2014 for the 2014 tax year.

147. On June 24, 2014, NARC paid the entire liability reflected on the Return Correction Notice for the 2013 tax year consisting of tax of \$430,851, penalties of \$43,085, and accrued interest of \$6,368.

148. NARC filed its 2014 Original Return on the extended due date of January 15, 2015.

149. On its 2014 Original Return, NARC reported tax of \$545,343 estimated tax payments of \$600,000, and an overpayment of \$54,657 which was carried forward to the following tax year.

150. On March 18, 2015, the Department issued an Account Notice to NARC for its 2014 tax year assessing a late estimated tax penalty of \$43,085.

151. The Department applied NARC's reported overpayment for 2014 of \$54,657 to the penalty of \$43,085, resulting in an overpayment credit of \$11,572 for the following tax year.

152. NARC timely filed Amended Returns for the Years at Issue tax years requesting refunds of the penalties paid of \$43,085 for both tax years and interest of \$6,367 for the 2013 tax year.

153. The Department issued the Notices denying NARC's request for a refund of penalties and interest paid.

154. NARC is entitled to a refund of all penalties and interest paid.

155. Under Illinois law, the Department may not impose penalties if the taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

156. NARC made a good faith effort to determine its proper tax liability for the Years at Issue tax years and to pay its proper tax liability in a timely fashion for both tax years.

157. NARC exercised ordinary business care and prudence in determining its tax liability for the Years at Issue.

158. NARC's underpayments for the Years at Issue, and the corresponding penalties imposed by the Department, are directly related to NARC's unintentional oversight to request a refund of its 2012 overpayment rather than carry forward that overpayment to the following tax year.

159. The Department's regulations provide that isolated computational or transcriptional errors are not evidence of the lack of good faith. 86 Ill. Adm. Sec. 700.400(d).

160. NARC's request for a refund of its 2012 overpayment is an isolated computational or transcriptional error that should not result in the imposition of penalties.

161. The Department's regulations provide that reasonable cause exists if a taxpayer makes an honest mistake. 86 Ill. Adm. Sec. 700.400(e)(7).

162. NARC's oversight on its 2012 Original Return was an honest mistake that should not result in penalties for subsequent tax years.

163. For the 2013 tax year, there was no actual underpayment because NARC had not received the refund check for the 2012 tax year at the time NARC filed its 2013 Original Return and the Department therefore had use of the money throughout NARC's entire 2013 tax year.

164. NARC's underpayments for the Years at Issue are supported by reasonable cause and all penalties and interest should therefore be refunded in full to NARC.

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

- (a) Finds and declares that NARC had reasonable cause for the tax reported on its Original Returns for the Years at Issue;
- (b) Orders the Department to refund all penalties and interest paid by NARC for the Years at Issue; and
- (c) Grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

Nissan Auto Receivables Corporation II
Petitioner

By: 
David A. Hughes

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Christopher T. Lutz
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500 W. Madison Street, Suite 3700
Chicago, IL 60661
Telephone: (312) 606-3212

EXHIBIT A

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



#BWNKMGV
#CNXX XX88 4328 7527#
NISSAN AUTO RECEIVABLES CORP II & AFFIL
PO BOX 685013
FRANKLIN TN 37068-5013

November 3, 2017



Letter ID: CNXXXX8843287527

Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A1886652416
Reporting period: March 2010

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

If you agree and your account is in balance, no action is required. You will receive a full refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill.

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

- If the amount of tax at issue, exclusive of penalty and interest is more than \$15,000, or if you are not claiming an overpayment of tax but the total penalties and interest are 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 that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within 60 days of this notice. If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing 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 denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

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) 524-4279

cc: Ashland Group C/O Steve Dietrich
11550 Fuqua, STE 500
Houston TX 77034

Statement

Date: November 3, 2017
Letter ID: CNXXXX8843287527
Name: NISSAN AUTO RECEIVABLES CORP II & AFFIL
Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A1886652416
Reporting period: March 2010

Computation of claim denial

Reporting period ending:	03/31/2010
Claim receive date:	05/21/2012
Amount of original claim:	\$1,033,847.00
Amount of proposed adjustment:	(\$1,033,847.00)
Net claim allowed:	\$0.00

Bankruptcy Information

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

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- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

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Explanation of Audit Adjustments

Income Tax



#BWNKMGV
#CNXX X13X X261 2XX0#
NISSAN AUTO RECEIVABLES CORP II & AFFIL
PO BOX 685013
FRANKLIN TN 37068-5013

November 3, 2017



Letter ID: CNXXX13XX2612XX0

Taxpayer ID: 95-4831541

Account ID: 07253-19072

Audit ID: A1886652416

Reporting period: March 2010

Explanation of adjustments for tax period ending 03/31/2010

Return Impact

Tax impact

We have determined that you do not have nexus protection under PL 86-272. Any applicable income earned will be subject to apportionment and Illinois Income Tax. [35 ILCS 5/304 and 86 IL Adm. Code 100.9270]

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



#BWNKMGV
#CNXX X178 6736 X8X9#
NISSAN AUTO RECEIVABLES CORP II & AFFIL
PO BOX 685013
FRANKLIN TN 37068-5013

November 3, 2017



Letter ID: CNXXX1786736X8X9

Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A1886652416
Reporting period: March 2011

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

If you agree and your account is in balance, no action is required. You will receive a full refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill.

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- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within 60 days of this notice. If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing 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 denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

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) 524-4279

cc: Ashland Group C/O Steve Dietrich
11550 Fuqua, STE 500
Houston TX 77034

Statement

Date: November 3, 2017
Letter ID: CNXXX1786736X8X9
Name: NISSAN AUTO RECEIVABLES CORP II & AFFIL
Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A1886652416
Reporting period: March 2011

Computation of claim denial

Reporting period ending:	03/31/2011
Claim receive date:	05/21/2012
Amount of original claim:	\$832,403.00
Amount of proposed adjustment:	(\$832,403.00)
Net claim allowed:	\$0.00

Bankruptcy Information

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

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- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

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Explanation of Audit Adjustments

Income Tax



#BWNKMGV
#CNXX XXX2 227X X640#
NISSAN AUTO RECEIVABLES CORP II & AFFIL
PO BOX 685013
FRANKLIN TN 37068-5013

November 3, 2017



Letter ID: CNXXXXXX2227XX640

Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A1886652416
Reporting period: March 2011

Explanation of adjustments for tax period ending 03/31/2011

Return impact

Tax impact

We have determined that you do not have nexus protection under PL 86-272. Any applicable income earned will be subject to apportionment and Illinois Income Tax. [35 ILCS 5/304 and 86 IL Adm. Code 100.9270]

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



#BWNKMGV
#CNXX X16X 1X7X 5126#
NISSAN AUTO RECEIVABLES CORP II & AFFIL
PO BOX 685013
FRANKLIN TN 37068-5013

January 17, 2019



Letter ID: CNXX16X1X7X5126

Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2013

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

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- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within 60 days of this notice. If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing 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 denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final.

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

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

Sincerely,

Ed Buckles
Acting Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 658-4960

Statement

Date: January 17, 2019
Letter ID: CNXXX16X1X7X5126
Name: NISSAN AUTO RECEIVABLES CORP II & AFFIL
Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2013

Computation of claim denial

Reporting period ending:	03/31/2013
Claim receive date:	10/26/2016
Amount of original claim:	\$49,453.00
Amount of proposed adjustment:	(\$49,453.00)
Net claim allowed:	\$0.00

Bankruptcy Information

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

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- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

Statement

Date: January 17, 2019
Letter ID: CNXXX16X1X7X5126
Name: NISSAN AUTO RECEIVABLES CORP II & AFFIL
Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2013

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

Notice of Claim Denial

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



#BWNKMGV
#CNXX X2X5 7X9X 7362#
NISSAN AUTO RECEIVABLES CORP II & AFFIL
PO BOX 685013
FRANKLIN TN 37068-5013

January 17, 2019



Letter ID: CNXX02X57X9X7362

Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2013

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(a)).

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If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

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

Sincerely,

Ed Buckles
Acting Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 558-4960

Statement

Date: January 17, 2019
Letter ID: CNXXX2X57X9X7362
Name: NISSAN AUTO RECEIVABLES CORP II & AFFIL
Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2013

Computation of claim denial

Reporting period ending:	03/31/2013
Claim receive date:	12/21/2016
Amount of original claim:	\$480,304.00
Amount of proposed adjustment:	(\$480,304.00)
Net claim allowed:	\$0.00

Bankruptcy Information

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

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- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

Statement

Date: January 17, 2019
Letter ID: CNXXX2X57X9X7362
Name: NISSAN AUTO RECEIVABLES CORP II & AFFIL
Taxpayer ID: 95-4831541
Account ID: 07253-18072
Audit ID: A2035584544
Reporting period: March 2013

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

Notice of Claim Denial

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



#BWNKMGV
#CNXX XX62 678X 5925#
NISSAN AUTO RECEIVABLES CORP II & AFFIL
PO BOX 685013
FRANKLIN TN 37068-5013

January 17, 2019



Letter ID: CNXXXX62678X5925

Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2014

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

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

Sincerely,

Ed Buckles
Acting Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 558-4960

Statement

Date: January 17, 2019
Letter ID: CNXXX62678X5925
Name: NISSAN AUTO RECEIVABLES CORP II & AFFIL
Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2014

Computation of claim denial

Reporting period ending:	03/31/2014
Claim receive date:	10/26/2016
Amount of original claim:	\$43,085.00
Amount of proposed adjustment:	(\$43,085.00)
Net claim allowed:	\$0.00

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Statement

Date: January 17, 2019
Letter ID: CNXXXX62678X5925
Name: NISSAN AUTO RECEIVABLES CORP II & AFFIL
Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2014

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Notice of Claim Denial

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



#BWNKMGV
#CNXX XX91 624X X480#
NISSAN AUTO RECEIVABLES CORP II & AFFIL
PO BOX 685013
FRANKLIN TN 37068-5013

January 17, 2019



Letter ID: CNXXXX91624XX480

Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2014

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Buckles".

Ed Buckles
Acting Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 558-4960

Statement

Date: January 17, 2019
Letter ID: CNXXXX91624XX480
Name: NISSAN AUTO RECEIVABLES CORP II & AFFIL
Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2014

Computation of claim denial

Reporting period ending:	03/31/2014
Claim receive date:	12/21/2016
Amount of original claim:	\$588,428.00
Amount of proposed adjustment:	(\$588,428.00)
Net claim allowed:	\$0.00

Bankruptcy Information

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Statement

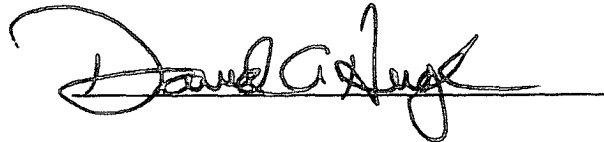
Date: January 17, 2019
Letter ID: CNXXXX91624XX480
Name: NISSAN AUTO RECEIVABLES CORP II & AFFIL
Taxpayer ID: 95-4831541
Account ID: 07253-19072
Audit ID: A2035564544
Reporting period: March 2014

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

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **AMENDED PETITION** to be served upon the Defendant 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 25th day of July, 2019.

Valerie Puccini, Esq.
Ashley Forte, Esq.
Ronald Forman, Esq.
James R. Reynolds
Illinois Department of Revenue
100 W. Randolph Street
Level 7-900
Chicago, Illinois 60601
valerie.a.puccini@illinois.gov
ashley.forte@illinois.gov
ronald.forman@illinois.gov
James.R.Reynolds@Illinos.gov

A handwritten signature in black ink, appearing to read "David A. Hugg", written over a horizontal line.