

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

KAJEET, INC.,

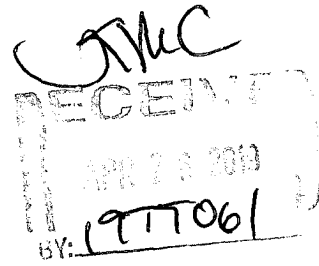
Petitioner,

v.

ILLINOIS DEPARTMENT OF REVENUE,

Respondent.

No.



PETITION

Petitioner Kajeet, Inc. ("Kajeet"), by and through its attorneys, Hinshaw & Culbertson LLP, petitions for relief from a notice of deficiency issued to it by the Illinois Department of Revenue (the "Department"), and, as a basis for its case, alleges as follows:

INTRODUCTION

1. This case involves the proper income tax treatment of \$66,019,643.00 received by Kajeet (the "Fraud Award") from UBS Securities LLC, and/or its affiliates UBS AG and UBS Financial Securities, Inc. (collectively, "UBS"), for resolution of an intangible chose in action that arose from misrepresentations by UBS made outside Illinois about Kajeet's investments in auction rate securities (the "UBS Fraud Claim").

2. Kajeet is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in McLean, Virginia.

3. At all relevant times, Kajeet did not have a commercial domicile in Illinois and was a not a resident of Illinois.

4. Kajeet's address is 7901 Jones Branch Drive, Suite 350, McLean, Virginia 22102, and can be reached by telephone at (240) 482-3480.

5. Kajeet is represented by James Harbert, John W. Dubbs III, and Arsalan Nayani of Hinshaw & Culbertson LLP, 151 North Franklin Street, Suite 2500, Chicago, Illinois 60606,

all of whom can be reached at (312) 704-3000. Their respective email addresses are as follows: jharbert@hinshawlaw.com and jdubbs@hinshawlaw.com and anayani@hinshawlaw.com.

6. Kajeet's federal employer identification number is 20-0335621.

7. Kajeet timely filed an Illinois Corporation Income and Replacement Tax Return (Form IL-1120) for the taxable year ended September 30, 2011. Kajeet thereafter filed an Amended Corporation Income and Replacement Tax Return (Form IL-1120-X) for the taxable year ended September 30, 2011 on or about June 17, 2013.

8. In a notice of deficiency dated February 27, 2019, the Department determined a deficiency in corporate income and replacement tax of Kajeet in the amount of \$603,928.00 and in interest in the amount of \$133,680.79 for taxable year ended September 30, 2011 (the "Notice"). A copy of the Notice is attached hereto as Exhibit A.

JURISDICTION

9. Jurisdiction over this action is conferred upon the Illinois Independent Tax Tribunal by section 1-45 of the Illinois Independent Tax Tribunal Act of 2012. 35 ILCS 1010/1-45.

SUMMARY OF ERRORS

10. The Department's determination of tax and interest set forth in the Notice is based upon the following errors:

(a) The Department erred in determining that the Fraud Award received by Kajeet in resolution of the UBS Fraud Claim is to be apportioned to Illinois, when the UBS Fraud Claim did not serve an operational function of Kajeet, in violation of the Due Process Clause and the Commerce Clause of the United States Constitution. (Count I).

(b) The Department erred in determining that an apportionment formula should be applied to the Fraud Award received by Kajeet in resolution of the UBS Fraud Claim,

when such formula leads to a result that is out of all proportion to the business transacted by Kajeet in Illinois or that has led to a grossly distorted result, in violation of the Commerce Clause of the United States Constitution (Count II).

(c) In the alternative, the Department erred in determining that the Fraud Award received by Kajeet in resolution of the UBS Fraud Claim constituted business income, instead of an unspecified item of nonbusiness income that is not allocable to Illinois under the statutory apportionment formula (Count III).

(d) In the alternative, the Department erred in applying the statutory method of apportionment by treating the Fraud Award as being a receipt in lieu of a payment for intangible goodwill or intangible going concern value. (Count IV).

(e) In the alternative, the Department erred in disallowing an alternative method of apportionment for the Fraud Award received by Kajeet in resolution of the UBS Fraud Claim (Count V).

STATEMENT OF FACTS

Background

11. Kajeet began its operations as a retail distributor of cellular telephones with child-friendly content and features and a retail provider of prepaid mobile telephone services to consumers. Following the events giving rise to the UBS Fraud Claim, Kajeet ceased engaging in that retail consumer business.

12. Kajeet currently operates three other businesses: (i) providing wireless enablement services, principally for cable companies; (ii) providing cloud-managed wireless data solutions to businesses and other enterprises; and (iii) providing education broadband services for schools and students.

13. Kajeet maintained its headquarters office in Bethesda, Maryland from the time of the commencement of its operations through the taxable year ended September 30, 2011 and later periods. Kajeet now maintains its headquarters office in McLean, Virginia.

14. The headquarters office of Kajeet outside of Illinois has always been the location from which Kajeet's management team has directed and managed Kajeet's business.

15. Kajeet is, and at all relevant times was, a nonresident of Illinois. Kajeet does not, and at all relevant times did not, maintain a commercial domicile in Illinois.

The UBS Fraud Claim

16. During the period from 2006 through 2008, Kajeet was in its early development stages, starting up its operations for its business as a retail distributor of child-friendly cellular telephones and a provider of prepaid mobile telephone services, raising venture capital from investors, and arranging for sales of cellular telephones to customers.

17. In July of 2006, Kajeet, through its representatives, met outside of Illinois with UBS through its representatives, to discuss a proposal for UBS to service Kajeet's corporate cash management needs. Kajeet expressed its desire to UBS to hold the funds it had raised from investors in a conservative investment vehicle until such future time as the funds could be put to use in its then existing retail business.

18. UBS proposed that Kajeet invest the cash it had raised from investors in what are referred to as "auction rate securities" through an investment program operated by UBS. The auction rate securities were long-term securities with interest rates that were periodically reset.

19. As explained in the securities fraud complaint filed against UBS by the Securities and Exchange Commission on December 11, 2008 in the United States District Court for the Southern District of New York, important features of auction rate securities were misrepresented by UBS to its customers:

11. ARS [auction rate securities] are bonds issued primarily by municipalities and student loan entities, or preferred stock issued by closed-end mutual funds, each of which provide for interest rates or dividend yields that are periodically reset through auctions, typically every seven, fourteen, twenty-eight or thirty-five days. ARS are usually issues with maturities of 30 years, but the maturities can range from five years to perpetuity.

* * *

18. Through its FAs [financial advisors] UBS marketed ARS to its customers as cash alternatives which could be liquidated at the customer's demand on the next auction date. As a result, many customers placed money in these investments that they might need in the short-term, such as for a down payment on a house, medical expense, college tuition, or taxes. In many cases, UBS did not advise these customers that under certain circumstances, the funds invested for short-term needs could be tied up indefinitely, and that other products that is marketed as cash alternatives did not carry this same risk.

* * *

22. Additionally, UBS knew or was reckless in not knowing that the liquidity risk associated with ARS were not disclosed to many of its customers and that these risks were inconsistent with affirmative representations made by UBS. * * *

Complaint at 4, 6, 7, *Securities and Exchange Commission v. UBS Securities LLC*, No. 08 CIV 10754 (S.D. N.Y. filed Dec. 11, 2008).

20. UBS misrepresented to Kajeet the risks of illiquidity associated with the auction rate securities it had invested for Kajeet. UBS's misrepresentations resulted in Kajeet investing millions of dollars in auction rate securities through UBS.

21. At the end of November of 2007, Kajeet's account with UBS held investment assets that had been valued at \$8,140,187.07, 99.3% of which, or \$8,083,180.08, were auction rate securities.

22. In February of 2008, UBS ceased supporting its auction rate securities investment program. This decision by UBS resulted in Kajeet's securities investments of approximately \$8 million becoming illiquid.

23. The consequences to Kajeet of the illiquidity of its investments in auction rate securities were catastrophic to the consumer retail business Kajeet was conducting. Kajeet could not perform on contracts it had signed for the purchase of cellular telephones. Kajeet was forced to cancel its most significant commercial transaction for consumer retail sales in its history—with Target Corp., stop paying consumer retail market development funds to Best Buy Co., lay off its field retail sales force, and end its consumer retail business.

24. On May 2, 2008, Kajeet sold a portion of its investments in auction rate securities with a par value of \$4 million in a private sale, resulting in a loss of \$397,184. The remaining portion of the investments in auction rate securities with a par value of \$4 million was sold for a \$400,000 gain on January 9, 2009. The net amount of the two sales was an investment gain of \$2,816. Kajeet reported the loss and the gain on the sales of its investment in auction rate securities separately on its income tax returns.

25. The losses to Kajeet caused by the UBS misrepresentations were sustained in the taxable year ended September 30, 2008. Those losses gave rise to the UBS Fraud Claim as a chose in action.

Kajeet's Prosecution of the UBS Fraud Claim

26. In July of 2009, Kajeet commenced an arbitration action against UBS with the Financial Industry Regulatory Authority ("FINRA") to resolve the UBS Fraud Claim. The UBS Fraud Claim consisted of several related claims against UBS in the arbitration action, all based on UBS's misrepresentations, including federal and state securities fraud; common law fraud; negligent misrepresentation; breach of contract; breach of fiduciary duty; and promissory estoppel.

27. The relief sought by Kajeet in its pursuit of the UBS Fraud Claim included consequential damages, punitive damages, interest, and attorneys' fees and costs.

Resolution of the UBS Fraud Claim

28. Following an evidentiary hearing, a FINRA arbitration panel on August 3, 2010 found UBS liable and resolved the UBS Fraud Claim in Kajeet's favor. Kajeet was awarded consequential damages in the amount of \$80,800,000. UBS, however, refused to pay the arbitration award and Kajeet thereafter file a legal action in Maryland state court to enforce the arbitration award.

29. On April 22, 2011, Kajeet and UBS settled the UBS Fraud Claim in the Maryland state court action. In accordance with the settlement agreement, UBS paid Kajeet the sum of \$73,500,000 (gross of attorneys' fees) on or about April 25, 2011. The net amount of \$66,019,643.00 received by Kajeet constitutes what has been defined herein as the "Fraud Award."

The Fraud Award as Reported on Kajeet's Return; Alternative Apportionment Methods

30. For the taxable year ended September 30, 2011, Kajeet reported the Fraud Award paid by UBS on its Corporation Income and Replacement Tax Return (Form IL-1120) and on its Amended Corporation Income and Replacement Tax Return (Form IL-1120-X).

31. The alternative method of apportionment used by Kajeet on its Amended Corporation and Replacement Tax Return (Form IL-1120-X) apportioned the Fraud Award entirely to Maryland.

32. An alternative method of apportionment requested by Kajeet in the course of the administrative consideration of its Illinois income tax for the taxable year ended September 30, 2011 allocated the entire Fraud Award outside Illinois and included the Fraud Award in the denominator of the apportionment factor.

The Apportionment Formula Used by the Department in the Notice

33. The apportionment formula used by the Department in the Notice to apportion a portion of the Fraud Award to Illinois had the following features (which are contested herein):

(a) The apportionment formula used by the Department treated the Fraud Award (i) as business income that can apportioned to Illinois, (ii) as constituting a receipt in lieu of a payment for intangible goodwill or intangible going concern value, and (iii) as excludible entirely from both the numerator and the denominator of the apportionment factor.

(b) The apportionment formula used by the Department apportioned a portion of the Fraud Award to Illinois by multiplying the amount of the Fraud Award by an apportionment factor. The numerator of the apportionment factor was based on Kajeet's gross receipts from sales within Illinois for the taxable year ended September 30, 2011 and the denominator was based on Kajeet's total gross receipts from sales for the taxable year ended September 30, 2011.

(c) The apportionment formula used by the Department included in the apportionment factor gross receipts from sales occurring during a single taxable year, the taxable year of receipt, instead of the taxable year in which the losses giving rise to the UBS Fraud Claim were sustained or the taxable years over which Kajeet was harmed.

(d) The apportionment formula used by the Department allocated a portion of the Fraud Award—an extraordinary item received by Kajeet—to a year for which there was no federal taxable income by reason of a net operating loss deduction, the use of which deduction was precluded by Illinois statute for purposes of calculating Kajeet's Illinois income tax for the taxable year ended September 30, 2011.

APPLICABLE LAW

Constitutional Principles

34. 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.

35. 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.

36. The Commerce Clause permits Illinois to tax interstate commerce only so long as the tax “is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State.” *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). That is, income “earned in the course of activities unrelated to [those carried out in a] State” is to be excluded from apportionment to that State. *Exxon Corp. v. Department of Revenue of Wisconsin*, 447 U.S. 207, 223 (1980).

37. The Due Process Clause and the Commerce Clause prohibit the apportionment of income received by a nondomiciliary corporation from a capital transaction that does not serve an operational function rather than an investment function. *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 787 (1992).

38. As applied to an asset, the operational function test required by the Due Process Clause and the Commerce Clause is instrumental to the constitutionally relevant inquiry of whether the asset was a unitary part of the business being conducted in the taxing State, rather than a discrete asset to which the State has no claim. *MeadWestvaco Corp. v. Illinois Dept. of Revenue*, 553 U.S. 16, 29-30 (2008).

39. The Commerce Clause prohibits a State from applying an apportionment formula in which “the income attributed to the State is in fact out of all appropriate proportion to the business transacted in that State, or has led to a grossly distorted result.” *Trinova Corp. v. Mich. Department of Treasury*, 498 U.S. 358, 380 (1992) (internal citations and quotation marks omitted).

Statutory Provisions

40. Section 201(a) of the Illinois Income Tax Act imposes income tax on corporations on the privilege of earning or receiving income in Illinois. 35 ILCS 5/201(a).

41. Section 1501(a)(1) of the Illinois Income Tax Act defines “business income” as “all income that may be treated as apportionable business income under the Constitution of the United States. Business income is net of the deductions allocable thereto.” 35 ILCS 5/1501(a)(1). Section 1501(a)(13) of the Illinois Income Tax defines “nonbusiness income” as “all income other than business income or compensation.” 35 ILCS 5/1501(a)(13).

42. Section 303 of the Illinois Income Tax Act provides that a nonresident must allocate to Illinois certain specified items of nonbusiness income, such as capital gains and losses, rents, and royalties related to real estate and tangible personal property located in Illinois. Section 303 also provides that a nonresident must allocate to Illinois specified income from intangibles, but only if the taxpayer had its commercial domicile in Illinois. *See* 35 ILCS 5/303(b)(3).

43. Section 301(c)(2)(B) of the Illinois Income Tax Act provides that, in the case of a corporation, interest, dividends, and other unspecified items of nonbusiness income not otherwise allocated under section 303 are allocated to Illinois only if the corporation had a commercial domicile in Illinois. 35 ILCS 5/301(c)(2)(B). In that regard, a commercial domicile

is defined as “the principal place from which the taxpayer’s trade or business is directed or managed.” 35 ILCS 5/1501(a)(2).

44. Sections 304(a) through 304(e) and 304(h) of the Illinois Income Tax Act, 35 ILCS 5/304(a)-(e), (h), provide an apportionment formula to apportion the business income of persons other than Illinois residents using an apportionment factor, the numerator of which is the total sales of the person in Illinois during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year (i.e., the sales factor).

45. If the allocation and apportionment provisions of sections 304(a) through 304(e) and 304(h) of the Illinois Income Tax Act, 35 ILCS 5/304(a)-(e), (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 an alternative apportionment that entails (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. 35 ILCS 5/304(f).

COUNT I

THE DUE PROCESS AND COMMERCE CLAUSES PROHIBIT THE APPORTIONMENT OF THE FRAUD AWARD TO ILLINOIS BECAUSE THE UBS FRAUD CLAIM DID NOT SERVE AN OPERATIONAL FUNCTION.

46. Kajeet realleges and incorporates in this Count I paragraphs 1 through 45 as if fully alleged herein.

47. The UBS Fraud Claim, as an intangible chose in action, did not serve an operational function of Kajeet. As a result, the Due Process Clause and the Commerce Clause prohibit the taxation by Illinois of the Fraud Award received by Kajeet for the UBS Fraud.

WHEREFORE, Kajeet prays that the Tribunal hear this case and grant the following relief:

(A) Find and decide that the Department erred in determining that the Fraud Award is subject to taxation by Illinois;

(B) Determine that there is no deficiency in accordance with the allegations of fact and assignments of error herein, cancel the Notice, and render a decision in favor of Kajeet and against the Department; and

(C) Grant Kajeet such other and further relief as the Tribunal deems just and proper.

COUNT II

THE COMMERCE CLAUSE PROHIBITS AN APPORTIONMENT OF THE FRAUD AWARD THAT IS OUT OF ALL PROPORTION TO BUSINESS TRANSACTED IN ILLINOIS OR LEADS TO A GROSSLY DISTORTED RESULT.

48. Kajeet realleges and incorporates in this Count II paragraphs 1 through 45 as if fully alleged herein.

49. The apportionment formula used in the Notice to apportion the Fraud Award for the taxable year ended September 30, 2011 resulted in income being apportioned to Illinois that is in fact out of the appropriate proportion to Kajeet's business transacted in Illinois, or has otherwise led to a grossly distorted result. As a result, the Commerce Clause prohibits Illinois from applying the apportionment formula used in the Notice to the Fraud Award.

WHEREFORE, Kajeet prays that the Tribunal hear this case and grant the following relief:

(A) Find and decide that the Department erred in applying an apportionment formula to the Fraud Award that leads to a result that is out of all proportion to the business transacted by Kajeet in Illinois or that has led to a grossly distorted result;

(B) Determine that there is no deficiency in accordance with the allegations of fact and assignments of error herein, cancel the Notice, and render a decision in favor of Kajeet and against the Department; and

(C) Grant Kajeet such other and further relief as the Tribunal deems just and proper.

COUNT III

ALTERNATIVELY, THE FRAUD AWARD WAS NONBUSINESS INCOME AND THEREFORE NOT ALLOCABLE TO ILLINOIS UNDER STATUTORY APPORTIONMENT.

50. As an alternative to Counts I and II, Kajeet realleges and incorporates in this Count III paragraphs 1 through 45 as if fully alleged herein.

51. The Fraud Award was received in resolution of the UBS Fraud Claim and therefore did not arise from transactions and activity in the regular course of Kajeet's trade or business.

52. The Fraud Award was received in resolution of the UBS Fraud Claim and therefore did not constitute income from tangible or intangible property for which the acquisition, management, and disposition of such property constituted integral parts of Kajeet's regular trade or business operations.

53. The Fraud Award is not "business income" as defined in section 1501(a)(1) of the Illinois Income Tax Act. 35 ILCS 5/1501(a)(1). The Fraud Award is therefore nonbusiness income by virtue of section 1501(a)(13) of the Illinois Income Tax Act. 35 ILCS 5/1501(a)(13).

54. The Fraud Award constituted an unspecified item of nonbusiness income not otherwise allocated under section 303 of the Illinois Income Tax Act. As a result, under section 301(c)(2)(B) of the Illinois Income Tax Act, 35 ILCS 5/301(c)(2)(B), the Fraud Award is not allocable to Illinois because Kajeet did not have a commercial domicile in Illinois.

WHEREFORE, Kajeet prays that the Tribunal hear this case and grant the following relief in the event the Tribunal does not rule in its favor on Counts I and II:

(A) Find and decide that the Department erred in determining that the Fraud Award constituted business income, instead of an unspecified item of nonbusiness income that is not allocable to Illinois under the statutory apportionment formula;

(B) Determine that there is no deficiency in accordance with the allegations of fact and assignments of error herein, cancel the Notice, and render a decision in favor of Kajeet and against the Department; and

(C) Grant Kajeet such other and further relief as the Tribunal deems just and proper.

COUNT IV

ALTERNATIVELY, IF THE FRAUD AWARD CONSTITUTES BUSINESS INCOME, THE DEPARTMENT ERRED IN APPLYING THE STATUTORY APPORTIONMENT FORMULA.

55. As an alternative to Counts I, II, and III, Kajeet realleges and incorporates in this Count IV paragraphs 1 through 45 as if fully alleged herein.

56. The Fraud Award is not properly treated under the statutory apportionment formula as being a receipt in lieu of a payment for intangible goodwill or intangible going concern value.

57. If the Fraud Award is properly characterized as business income, then no part, or only that part otherwise determined at trial, of the Fraud Award is properly included in the numerator of the apportionment factor and the entire amount of the Fraud Award is properly included in the denominator of the apportionment factor.

WHEREFORE, Kajeet prays that the Tribunal hear this case and grant the following relief, in the event the Tribunal does not rule in its favor on Counts I, II, and III:

(A) Find and decide that the Department erred in applying the statutory method of apportionment by treating the Fraud Award as being a receipt in lieu of a payment for intangible goodwill or intangible going concern value and excluding the Fraud Award from the apportionment factor;

(B) Redetermine the deficiency in accordance with the allegations of fact and assignments of error herein, cancel the Notice, and render a decision in favor of Kajeet and against the Department; and

(C) Grant Kajeet such other and further relief as the Tribunal deems just and proper.

COUNT V

ALTERNATIVELY, KAJEET IS ENTITLED TO ALTERNATIVE ALLOCATION AND APPORTIONMENT.

58. As an alternative to Counts I through IV, Kajeet realleges and incorporates in Count V paragraphs 1 through 45 as if fully alleged herein.

59. Kajeet hereby petitions the Tribunal, as permitted by Title 86, Illinois Administrative Code, section 100.3390(e)(3), for an alternative apportionment under section 304(f) of the Illinois Income Tax Act.

60. To the extent the provisions of sections 304(e) through (e) of the Illinois Income Tax Act operate to allocate and apportion the Fraud Award in the manner reflected in the Notice, they do not fairly represent the market for Kajeet's goods, services, or other sources of business income.

61. The application of the apportionment formula reflected in the Notice that excludes the Fraud Award from the apportionment factor (i) results in the taxation of extraterritorial values, or (ii) operates unreasonably and arbitrarily in attributing to Illinois a percentage of income that is out of all proportion to the market for Kajeet's sources of business income in

Illinois. As a result, the application of the apportionment formula reflected in the Notice leads to a grossly distorted result in Kajeet's case.

62. The alternative method of apportionment used by Kajeet on its Amended Corporation Income and Replacement Tax Return (Form IL-1120-X) for the taxable year ended September 30, 2011 allocated the whole of the Fraud Award to Maryland, which was Kajeet's principal place of business and headquarters at the time the UBS Fraud Claim arose. That alternative method of apportionment was disallowed by the Department.

63. The alternative method of apportionment requested by Kajeet in the course of the administrative consideration of its Illinois income tax for the taxable year ended September 30, 2011 allocated the entire Fraud Award outside Illinois and included the Fraud Award in the denominator of the apportionment factor.

64. Kajeet is entitled to an alternative apportionment of the Fraud Award that is either (i) the alternative method used by Kajeet on its amended return for the taxable year ended September 30, 2011, or (ii) the alternative method requested by Kajeet in the course of the administration consideration of its Illinois income tax for the taxable year ended September 30, 2011, or (iii) such other alternative method as is established at trial to effectuate an equitable allocation and apportionment of Kajeet's income.

WHEREFORE, Kajeet prays that the Tribunal hear this case and grant the following relief, in the event the Tribunal does not rule in its favor on Counts I through IV:

(A) Find and decide that Kajeet is entitled to the use of an alternative apportionment to effectuate an equitable allocation and apportionment of Kajeet's income;

(B) Redetermine the deficiency in accordance with the allegations of fact and assignments of error herein, using an alternative apportionment method to effectuate an equitable

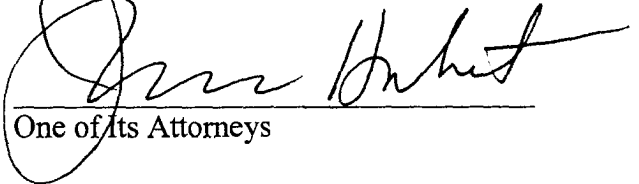
allocation and apportionment of Kajeet's income, and enter a decision in favor of Kajeet and against the Department on the redetermined deficiency; and

(C) Grant Kajeet such other and further relief as the Tribunal deems just and proper.

Respectfully submitted,

KAJEET, INC.

By:



One of its Attorneys

Dated: April 26, 2019

James Harbert (ARDC No. 3128432)
jharbert@hinshawlaw.com
John W. Dubbs III (ARDC No. 0682047)
jdubbs@hinshawlaw.com
Arsalan Nayani (ARDC No. 6321200)
anayani@hinshawlaw.com
HINSHAW & CULBERTSON LLP
151 North Franklin Street, Suite 2500
Chicago, IL 60606
312-704-3000

CERTIFICATE OF SERVICE

The undersigned, not an attorney, states that, on the 26th day of April, 2019, the foregoing instrument was served by causing a copy of the same to be deposited with the United States Postal Service, Chicago, Illinois, enclosed in an envelope, with postage fully prepaid, plainly addressed as follows:

Illinois Department of Revenue
Office of Legal Services
100 West Randolph Street, Suite 7-900
Chicago, IL 60601

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

Date: April 26, 2019

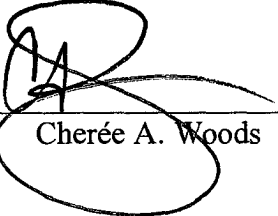

Cherée A. Woods

EXHIBIT A

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



February 27, 2019



Letter ID: CNXXX137618248X7

Taxpayer ID: 20-0335621
Audit ID: A893693952
Reporting period: September 2011
Total Deficiency: \$737,608.79
Balance due: \$737,608.79

#BWNKMGV
#CNXX X137 6182 48X7#
KAJEET INC
7901 JONES BRANCH DR STE 350
MCLEAN VA 22102-3341

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,

David Harris
Director

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

Statement

Date: February 27, 2019
Name: KAJEET INC
Taxpayer ID: 20-0335621
Letter ID: CNXXX137618248X7

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

Computation of deficiency

Reporting period: 30-Sep-2011

Income or loss

Federal taxable income	\$0.00
Net operating loss deduction	\$58,665,102.00
Income tax and replacement tax deduction	\$4,642.00
Other additions	\$0.00

Income allocable to Illinois

Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$0.00
Business income or loss	\$58,669,744.00
Apportionment formula	
Total sales everywhere	\$13,231,692.00
Total Illinois sales	\$1,522,579.00
Apportionment factor	0.115071
Business income/loss apportionable to IL	\$6,751,186.00
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	\$6,751,186.00

Net income

Base income or net loss	\$6,751,186.00
IL net loss deduction (NLD)	\$0.00
Income after NLD	\$5,388,015.00
Net income	\$6,751,186.00

Net replacement tax

Replacement tax	\$168,780.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$168,780.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$168,780.00

Net income tax

Income tax	\$435,148.00
Recapture of investment credits	\$0.00
Income tax before credits	\$435,148.00
Income tax investment credits	\$0.00
Net income tax	\$435,148.00

Refund or balance due

Net replacement tax	\$168,780.00
Net income tax	\$435,148.00

Statement

Date: February 27, 2019
Name: KAJEET INC
Taxpayer ID: 20-0335621
Letter ID: CNXXX137618248X7

Computation of deficiency

Reporting period: 30-Sep-2011

Total net income and replacement tax due	\$603,928.00
Total tax deficiency	\$603,928.00
Plus Interest on tax through February 27, 2019	\$133,680.79
Total deficiency	* \$737,608.79

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

Computation of balance due

Reporting period: 30-Sep-2011

Balance due	* \$737,608.79
-------------	----------------

Explanation of Audit Adjustments

Income Tax



February 27, 2019



Letter ID: CNXXXX412137X724

Taxpayer ID: 20-0335621

Account ID: 17588-75392

Audit ID: A893693952

Reporting period: September 2011

#BWNKMGV

#CNXX XX41 2137 X724#
KAJEET INC
7901 JONES BRANCH DR STE 350
MCLEAN VA 22102-3341

Explanation of adjustments for tax period ending 09/30/2011

We re-characterized as business income the FINRA award that is from transactions and

Return Impact

-\$66,019,643.00

Tax impact

\$603,928.00

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