

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

STEEL DYNAMICS, INC.)
)
) Petitioner)
)
) v.) No.
)
) THE ILLINOIS DEPARTMENT OF REVENUE,)
)
) Defendant.)

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PETITION

Petitioner, Steel Dynamics, Inc. (“SDI”), 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 beginning January 1, 2012 through December 31, 2014 (“Years in Issue”), SDI was a publicly traded corporation whose principal business address was 7575 W. Jefferson Boulevard, Fort Wayne, IN 46804-4131.
2. SDI is represented by David A. Hughes 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 312-606-3212 or dhughes@hmblaw.com; and 312-606-3206 or sbreslow@hmblaw.com, respectively.
3. SDI’s FEIN is 35-1929476.
4. SDI is the designated agent for a unitary group of affiliates that files Illinois corporate income and replacement tax returns on a combined basis.
5. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

NOTICES

6. On May 21, 2020, the Department issued an EDA-143-RR, Notice of Audit Results, and EDA-153, Acceptance of Revised Claim for Refund (collectively the “Notices”), disallowing SDI’s refund claim in the amount of \$3,018,207 (“Refund Claim”) 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

7. SDI 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.

8. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because SDI timely filed this Petition within 60 days of the Notices and the aggregate amount at issue exceeds \$15,000, exclusive of penalties and interest.

BACKGROUND

9. SDI and its affiliates are engaged in the manufacture and sale of steel products, the processing and sale of recycled ferrous and nonferrous metals, and the fabrication and sale of steel joists and deck products.

10. SDI owns 100 percent of the following subsidiaries that were treated as corporations for federal income tax purposes during the Years in Issue: Steel Dynamics Sales North America, Inc. (“SDSNA”), New Millennium Building Systems, LLC (“NMBS”), The Techs Industries, Inc. (“Techs”), and Steel Dynamics Columbus, LLC (“CRD”).

11. SDI and its unitary affiliates timely filed combined Illinois corporate net income and replacement tax returns (“Returns”) for the Years in Issue.

12. SDI included SDSNA, NMBS, Techs, and CRD (referred to collectively as the “Entities”) in SDI’s Returns for the Years in Issue.

13. SDSNA is an Indiana corporation engaged in the business of soliciting orders for sales of SDI’s products.

14. NMBS is an Indiana corporation engaged in fabrication operations, including producing trusses, girders, steel joists and steel decking products.

15. Techs, which is based in Pennsylvania, is a domestic supplier of hot-dipped galvanized steel sheet.

16. CRD, which is based in Mississippi, operates a high-tech electric arc furnace mill that produces steel.

17. On its originally filed Returns for the Years in Issue, SDI included the Entities’ Illinois gross receipts in the numerator of its combined sales factor.

18. On October 17, 2016, SDI filed its Refund Claim by amending its Returns to exclude the Entities’ Illinois gross receipts from the numerator of its combined sales factor because the Entities’ were not subject to Illinois net income and replacement tax in accordance with P.L. 86-272 (15 U.S.C. Sec. 381 et seq.).

19. The Department audited SDI for the Years in Issue.

20. The Department determined that the Entities’ Illinois gross receipts should be included in the numerator of the combined sales factor because the Entities’ were subject to Illinois net income and replacement tax.

21. SDI requested Informal Conference Board (“ICB”) review and the conference was held on February 11, 2020.

22. The ICB reviewed the Audit Bureau's determinations and on May 12, 2020 issued its Action Decision, which is attached hereto as Exhibit C.

23. In its Action Decision, the Informal Conference Board determined that because the activities of NMBS and SDSNA were not protected by P.L. 86-272, their Illinois receipts should be included in the numerator of SDI's combined Illinois sales factor. The Informal Conference Board did not address the other Entities, including Techs and CRD.

24. In accordance with the Action Decision, the Department partially denied SDI's Refund Claim and issued the Notices.

COUNT I

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

25. SDI realleges and incorporates by this reference the allegations made in paragraphs 1 through 24, inclusive, hereinabove.

26. P.L. 86-272 provides that a 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. 15 U.S.C. Sec. 381.

27. The Entities do not maintain an office, warehouse, storage facility, sample room or any other place of business in Illinois.

28. The Entities do not own, maintain, or lease any real, tangible, or personal property in Illinois.

29. SDI, NMBS, and CRD do not have any employees residing in Illinois.

30. Techs and SDSNA employ two sales representatives residing in Illinois who solicit orders for sales from an "in-home" office as defined by 86 Ill. Admin. Code 100.9720(c)(5)(M).

31. The Entities' employees visit Illinois customers solely for the purpose of soliciting orders for SDI products.

32. The Entities' employees carry supplies and other equipment, which they use in their solicitation activities in Illinois.

33. The Entities' employees do not resolve customer complaints in Illinois as all claims are approved and processed in Indiana.

34. SDSNA's division representatives handle all customer complaints and disputes at offices located in Butler, Columbia City, and Pittsboro, Indiana, depending upon the product line.

35. The Entities' employees do not replace or pick up damaged items because it would be impossible due to the size and weight of the products.

36. Due to the high cost to transport SDI's products, the Entities do not receive returned products within Illinois or any state.

37. If products require repairs, they are either repaired or scrapped by the customer, and the Entities issue a credit for the difference in price.

38. The Entities' employees do not receive or accept purchase orders from customers in Illinois.

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

40. The Entities' employees do not make repairs or provide maintenance to products sold in Illinois.

41. Any customer inquiries regarding repairs to products are addressed by personnel outside of Illinois.

42. The Entities' employees do not collect current or delinquent accounts in Illinois.

43. The Entities' employees do not investigate customers' credit worthiness in Illinois.
44. The Entities' employees do not repossess property in Illinois.
45. The Entities' employees do not secure deposits on sales in Illinois.
46. During sales visits to Illinois customers, customers or NMBS and SDSNA sales personnel occasionally take photographs of defective products and electronically transfer the photographs to personnel located outside of Illinois.
 47. On very rare occasions, NMBS employees gather information regarding a defective product from an Illinois customer.
 48. NMBS or SDSNA would not have independently sent employees to Illinois for the purpose of taking photographs of defective product or gathering information on defective product if its sales personnel were not already visiting Illinois customers.
 49. The act of taking photographs or gathering information regarding defective products is ancillary to solicitation because it serves no independent business function apart from its connection to the solicitation of orders for SDI's products.
 50. To the extent that the act of taking photographs or gathering information regarding defective products serves an independent business function, such acts are *de minimis* as they establish only a nontrivial, additional connection with Illinois. 86 Ill. Admin. Code 100.9720(b)(2)(D); *Wisconsin Department of Revenue v. Wrigley*, 505 U.S. 214 (1992).
 51. SDI's products are highly sophisticated and the Entities' sales personnel often require assistance to advise customers on the technical application of the products as part of their solicitation activities.

52. In order to understand how customers intend to use SDI's products, SDSNA metallurgists occasionally accompany sales personnel on sales visits to Illinois customers in order to help facilitate the invitation of an order.

53. SDSNA's metallurgists do not charge customers a fee for their services.

54. Because SDSNA's sales personnel often require metallurgists to solicit an order for a sale, the metallurgists' activities are ancillary to solicitation and do not serve an independent business function apart from soliciting an order for a sale. *Wisconsin Department of Revenue v. Wrigley*, 505 U.S. 214, 228 (1992)(“Solicitation of orders’ covers more than what is strictly *essential* to making requests for purchases”)(emphasis in original).

55. The Department determined that the activities of SDSNA's metallurgists in Illinois exceed solicitation under P.L. 86-272 because the metallurgists provide unprotected “technical assistance” that is not *de minimis*. See Exhibit C.

56. Providing “technical assistance,” including engineering assistance or design service, is not protected by P.L. 86-272 “when one of the purposes of the assistance or service is other than the facilitation of the solicitation of orders.” 86 Ill. Admin. Code 100.9720(b)(4)(F).

57. The activities of SDSNA's metallurgists are not “technical assistance” within the meaning of 86 Ill. Admin. Code 100.9720(b)(4)(F).

58. Metallurgists do not provide repair, engineering, design or maintenance services at Illinois customer locations.

59. When visiting Illinois customers, the metallurgists' only purpose is to facilitate the solicitation of orders by consulting with sales personnel and potential customers on the intended application and use of the product.

60. Even if the activities of the metallurgists constitute unprotected technical assistance, the metallurgists' visits to Illinois are sporadic, infrequent and therefore *de minimis* in nature.

61. The Department's determination, reflected in its Action Decision (Exhibit C), that activities that seek to generate future sales are not ancillary to the solicitation of an order contradicts the *Wrigley* decision, which held that any activity that ingratiates a salesperson with a customer and thereby facilitates requests for purchases is protected. *Wisconsin Department of Revenue v. Wrigley*, 505 U.S. 214, 235 (1992).

62. The Entities' activities in Illinois during the Years in Issue are limited to the solicitation of orders of tangible personal property and activities ancillary to solicitation under P.L. 86-272 and the U.S. Supreme Court's decision in *Wisconsin Department of Revenue v. Wrigley*, 505 U.S. 214 (1992) or, to the extent such activities exceeded solicitation, they are *de minimis*.

63. The Entities are not subject to Illinois net income and replacement tax under P.L. 86-272 and the Entities' Illinois receipts may therefore not be included in the numerator of SDI's combined Illinois sales factor for the Years in Issue.

64. The Department's denial of SDI's Refund Claim for the Years in Issue was in error.

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

- (a) finds and declares that the Entities are not subject to Illinois net income and replacement tax under P.L. 86-272 (15 U.S.C. Sec. 381);
- (b) finds and declares that the Entities' Illinois receipts may not be included in the numerator of SDI's combined Illinois sales factor;

- (c) enters judgment in favor of SDI and against the Defendants and orders Defendants to grant the full amount of SDI's Refund Claim with statutory interest thereon for the Years in Issue; and
- (d) grants such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully submitted,

STEEL DYNAMICS, INC.
Petitioner

By: 
One of Petitioner's Attorneys

David A. Hughes (dhughes@hmblaw.com)
Samantha K. Breslow (sbreslow@hmblaw.com)
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, IL 60661
(312) 606-3200

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

STEEL DYNAMICS INC.,)	
)	
Petitioner)	
)	
v.)	No.
)	
THE ILLINOIS DEPARTMENT)	
OF REVENUE,)	
)	
Defendant.)	

NOTICE OF FILING

To: 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

PLEASE TAKE NOTICE that on the 15th day of July, 2020, we filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, IL 60601, **Steel Dynamics, Inc.’s Petition**, a copy of which accompanies this notice and is served on you herewith.

Respectfully submitted,

STEEL DYNAMICS, INC.
Petitioner

By: 
One of Petitioner’s Attorneys

David A. Hughes
Samantha K. Breslow
Horwood Marcus & Berk Chartered
500 W. Madison, Suite 3700
Chicago, IL 60661
Phone: (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 before the hour of 5:00 p.m. on the 15th day of July, 2020.

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 Audit Results

for Acceptance of Revised Claim for Refund



May 21, 2020



Letter ID: L1433081136

Taxpayer ID: 35-1929476
Account ID: 14220-87424
Audit ID: A922166272
Return type: IL-1120
Audit periods: 01/2012 - 12/2014

STEEL DYNAMICS INC & SUBS
STEEL DYNAMICS INC AND SUBSIDIARIES
7575 W JEFFERSON BLVD
FORT WAYNE IN 46804-4131

Enclosed, find Form EDA-153, Acceptance of Revised Claim for Refund, showing the revised claim for refund we have determined is allowable for the periods shown above. If you agree to the revised refund amount, sign Form EDA-153 and return it to the address listed below. Note, if you sign the enclosed Form EDA-153 or Form IL-870, Waiver of Restrictions you waive the right to seek review by the Informal Conference Board.

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 that you are required to file tax returns. For those under 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.

Sincerely,

Beth Walton
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19020
SPRINGFIELD IL 62794-9020

217 557-0786
217 785-3251 fax

Elizabeth.Walton@illinois.gov

EXHIBIT B



EDA-153 Acceptance of Revised Claim for Refund

STEEL DYNAMICS INC & SUBS
STEEL DYNAMICS INC AND SUBSIDIARIES
7575 W JEFFERSON BLVD
FORT WAYNE IN 46804-4131

Taxpayer ID: 35-1929476
Account ID: 14220-87424
Audit ID: A922166272
Return type: 1120-X
Audit periods: 12/2012, 12/2013, 12/2014

I, the above named taxpayer, have previously filed a refund claim for one or more tax years included in the above audit. I hereby agree to the revised claim for refund amount as shown in column (E).

(A) Tax Year	(B) Date Claim Filed	(C) Amount of Refund Claimed	(D) Amount of Refund Disallowed	(E) Amount of Refund Allowed
2012	10/17/2016	\$949,199.00	\$904,261.00	\$44,938.00
2013	10/17/2016	\$1,421,351.00	\$1,350,449.00	\$70,902.00
2014	10/17/2016	\$904,834.00	\$763,497.00	\$141,337.00
		\$0.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$0.00

Sign Below:

I hereby waive the requirement under statute that a notice of claim denial be sent to me for the amount of refund disallowed as shown in column (D). I understand that the filing of this waiver is irrevocable and fully resolves the above amended returns. I understand that this waiver will allow the department to process my claim for refund amount as shown in column (E).

- If you filed a joint return for the year involved, both you and your spouse must sign this waiver. If acting under a power of attorney, one may sign as agent for the other.
- If a corporate return was filed, this waiver must be signed with the corporate name followed by the signature and title of the officer(s) duly authorized to sign.
- If you are a taxpayers attorney or agent, your actions must be specifically authorized by a power of attorney. If the power of attorney was not previously filed, it must accompany this waiver.
- If you are a person acting in a fiduciary capacity (e.g., executor, administrator, or trustee), Form IL-56, Notice of Fiduciary Relationship, must accompany this form, unless Form IL-56 was previously filed.

Corporate name _____

Signature of taxpayer or authorized representative _____ Title _____ Date _____

Signature of taxpayer or authorized representative _____ Title _____ Date _____

This form is authorized as outlined under the tax or fee Act imposing the tax or fee for which this form is filed. Disclosure of this information is required. Failure to provide information may result in this form not being processed and may result in a penalty.

EXHIBIT C



Illinois Department of Revenue

Informal Conference Board
Dan Hall, Administrator
100 West Randolph Street, 7-286
Chicago, Illinois 60601
Phone: 312 814-1722
Fax: 312-814-1402

RE: TAXPAYER: Steel Dynamics Inc. & Subs
DOCKET NO.: 18-0263
TAXPAYER ID: 35-1929476
AUDIT ID: A922166272

ACTION DECISION

The Informal Conference Board has reviewed the Illinois Department of Revenue Audit Bureau's proposed adjustments in this matter and, based upon information supplied during the review process, finds that no change is to be made to the proposed adjustments.

- A. New Millennium Building Systems (NMBS) had Illinois nexus in tax years 2012, 2013 and 2014 as the following activities are not protected activities under PL 86-272:
1. Sales personnel visits to Illinois customers for the taking of photos of the defective products in order to generate future sales.
 2. The mere assignment of the photo-taking activities to sales personnel does not, merely by such assignment, make such activities ancillary to solicitation of orders.
 3. The sending of quality and/or customer service personnel to visit an Illinois customer's location to gather information so as to facilitate a determination by a plant manager (located outside Illinois) as to who is at fault for the defective product, even if the purpose is to save on excessive transportation costs of returning the defective product.
 4. Activities that serve an independent business function are not ancillary to the solicitation of orders. The taxpayer admits that the sales personnel's activities (i.e. visits to Illinois customers for the taking of photos of defective products) if not performed by sales personnel, would otherwise be performed by some other employee.
 5. Activities that seek to generate future sales ("promote sales") are not ancillary to the solicitation of an order because PL 86-272 does not protect activity that facilitates sales.
 6. The sales, quality and customer service personnel's Illinois activities are not de minimus activities.

B. Steel Dynamics Sales North America (SDSNA) had Illinois nexus in tax years 2012, 2013 and 2014 as the following activities are not protected activities under PL 86-272:

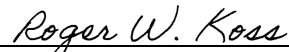
1. Activities that generate future sales. The taxpayer reiterates in its various responses to information document requests that the sole purpose of the metallurgists' activities was to generate/promote future sales.
2. The metallurgists' activities are not ancillary to the solicitation of sales. The mere fact that the taxpayer considers the metallurgists to be sales personnel does not protect their activities, which sole purpose was to promote/generate future sales.
3. The metallurgists' activities are not de minimus activities. The taxpayer made inconsistent statements as to the regularity and frequency of the metallurgists' visits to Illinois customers, which statements included:
 - a. Metallurgists occasionally accompanied sales representatives.
 - b. Metallurgists visits to customers occur as needed.
 - c. Metallurgists employed by taxpayer generally accompany sales personnel during sales calls.
 - d. Approximately two to three metallurgists (who are considered sales personnel) traveled to customer locations in Illinois per quarter.

The Audit Bureau is instructed to conclude and process the audit in a manner consistent with this decision.

Taxpayer Request for Audit Adjustments is Denied.

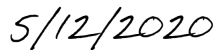


BRIAN FLIFLET
MEMBER, INFORMAL CONFERENCE BOARD



ROGER W. KOSS
MEMBER, INFORMAL CONFERENCE BOARD

BRIAN WOLFBERG
MEMBER, INFORMAL CONFERENCE BOARD



DATE ENTERED