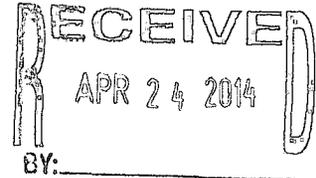


ILLINOIS INDEPENDENT
TAX TRIBUNAL



14 TT 67

BOM AMBIENTE INSURANCE)
COMPANY,)
)
Petitioner,)
)
v.)
)
ILLINOIS DEPARTMENT)
OF REVENUE,)
)
Respondent.)

PETITION

Bom Ambiente Insurance Company (“Petitioner”) hereby petitions for a redetermination of the deficiencies set forth by the Illinois Department of Revenue (the “Department”) in two notices of deficiency dated February 28, 2014, and as the basis for Petitioner’s case alleges as follows:

1. **Taxpayer Information.** Petitioner’s name, address, and telephone number are Bom Ambiente Insurance Company, c/o Aon Insurance Managers (Cayman) Ltd., 94 Solaris Avenue, 2nd Floor, Camana Bay, P.O. Box 69, Grand Cayman KY1-1102, Cayman Islands, Tel: 1-345-945-1266. Petitioner’s taxpayer identification number is 98-0367546.

2. **Notices of Deficiency and Years Involved.** The Department issued to Petitioner a Notice of Deficiency dated February 28, 2014 for the calendar tax year ended December 31, 2009 (“2009”). A copy of the Notice of Deficiency for 2009 is attached hereto as Exhibit A. The Department also issued to Petitioner a Notice of Deficiency dated February 28, 2014 for the calendar tax year ended December 31, 2010 (“2010”). A copy of the Notice of Deficiency for 2010 is attached hereto as Exhibit B.

3. **Jurisdiction.** The Tribunal has jurisdiction over this case pursuant to section 1-45(a) of the Illinois Independent Tax Tribunal Act of 2012, 35 ILCS 1010/1-45(a). The amount at issue in each Notice of Deficiency referred to in paragraph 2 (each, a “Notice,” and, collectively, the “Notices”) exceeds \$15,000, exclusive of penalties and interest. Petitioner also timely filed its petition within 60 days after the issuance of the Notices.

4. **Amounts in Dispute.** In the Notices, the Department determined the following deficiencies in tax, penalties, and interest, all of which are in dispute:

<u>Tax Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2009	\$43,694.00	\$6,804.10	\$4,447.25	\$54,945.35
2010	\$138,837.00	\$21,075.55	\$8,849.95	\$168,762.50
Total	\$182,531.00	\$27,879.65	\$13,297.20	\$223,707.85

5. **Assignments of Error.** The Department’s determinations of deficiencies in tax, penalties, and interest set forth in the Notices are based upon the following errors:

a. The Department erred in determining that Petitioner was required to file income and replacement tax returns for 2009 and 2010.

b. The Department erred in determining that Petitioner is liable for income and replacement tax in the amount of \$43,694.00, or in any other amount, for 2009, and in the amount of \$138,837.00, or in any other amount, for 2010.

c. The Department erred in determining that Petitioner exercised “the privilege of earning or receiving income in or as a resident of this State,” within the meaning of section 201(a) and (c) of the Illinois Income Tax Act, 35 ILCS 5/201(a), (c).

d. The Department’s imposition of income and replacement tax on Petitioner violates the McCarran-Ferguson Act, 15 U.S.C.A. §§ 1011–15.

e. The Department's imposition of income and replacement tax on Petitioner violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution, U.S. CONST. amend. XIV, §1.

f. The Department erred in determining that Petitioner is liable for late-filing or non-filing penalties of \$250.00, or in any other amount, for 2009 and \$250.00, or in any other amount, for 2010.

g. The Department erred in determining that Petitioner is liable for additional late-payment penalties in the amount of \$6,554.10, or in any other amount, for 2009, and in the amount of \$20,825.55, or in any other amount, for 2010.

h. The Department erred in determining that Petitioner is liable for interest in the amount of \$4,447.25, or in any other amount, for 2009, and interest of \$8,849.95, or in any other amount, for 2010.

i. The Department erred in failing to abate the penalties and interest that are in dispute in this case.

6. **Supporting Facts.** The facts upon which Petitioner relies to establish the errors identified in paragraph 5 are as follows:

a. Petitioner is a captive insurance company and wholly owned subsidiary of Republic Services, Inc. ("Republic").

b. Petitioner is incorporated under the laws of the Cayman Islands and has a Class "B" insurance license under the Cayman Islands' Insurance Law.

c. Republic is a publicly traded company incorporated under the laws of the State of Delaware and the parent of an affiliated group of companies.

d. During 2009 and 2010, Republic's corporate office, including its treasury, risk management, and other corporate functions, was located in Phoenix, Arizona.

e. During 2009 and 2010, Republic and its affiliates provided non-hazardous solid waste collection and disposal services in 40 states and Puerto Rico.

f. During 2009 and 2010, Zurich American Insurance Company ("Zurich"), a third party insurance company, provided high deductible insurance coverage to Republic for workers compensation, automobile, and general liabilities. Under the Zurich policies, Republic's deductibles for each occurrence ranged from \$1 million to \$5 million.

g. During 2009 and 2010, Petitioner provided deductible reimbursement insurance coverage to Republic for workers' compensation, automobile, and general liabilities. Under these policies (the "Policies"), Petitioner reimbursed Republic for a portion of the deductibles under the Zurich policies.

h. During 2009 and 2010, Cannon Cochran Management Services, Inc. ("CCMS") served as Republic's third party administrator. CCMS handled and paid all claims relating to Republic's workers' compensation, automobile, and general liabilities. CCMS did not have any contractual or other relationship with Petitioner.

i. Petitioner was not licensed or authorized to do business in this State.

j. Petitioner had no office or place of business in this State.

k. Petitioner did not own or lease any property in this State.

l. Petitioner did not advertise or solicit any business in this State.

m. Petitioner conducted no activities in this State.

n. No correspondence between Petitioner and any person originated from, terminated in, or otherwise occurred in this State.

- o. Petitioner had no employees, agents or other representatives in this State.
- p. All of the Policies were negotiated, issued by Petitioner, and received by Republic outside of this State.
- q. All of the premiums for the Policies were paid by Republic and received by Petitioner outside of this State.
- r. Petitioner did not investigate or adjust any claims or losses in this State.
- s. Petitioner did not inspect any risks in this State.
- t. All payments for claims or losses under the Policies (that is, deductible reimbursements) were made by Petitioner and received by Republic outside of this State.
- u. In *State Board of Insurance v. Todd Shipyards Corp.*, 370 U.S. 451 (1962), the U.S. Supreme Court held that the State of Texas did not have the power to tax insurance transactions where such transactions took place entirely outside the State and the only connection between such transactions and the State was that the insured risks were located in the State. In so holding, the Court relied on its prior decisions under the Due Process Clause in *Connecticut General Life Ins. Co. v. Johnson*, 303 U.S. 77 (1938), *St. Louis Cotton Compress Co. v. Arkansas*, 260 U.S. 346 (1922), and *Allgeyer v. Louisiana*, 165 U.S. 578 (1897), and on Congress' unequivocal statement in passing the McCarran-Ferguson Act that States' regulation and taxation of insurance be kept within the limits of these prior decisions.
- v. The insurance transactions between Petitioner and Republic took place entirely outside of this State. Therefore, *Todd Shipyards* controls the disposition of this case.
- w. Even assuming that *Todd Shipyards* is not controlling, Petitioner did not have the "minimum contacts" with this State required by the Due Process Clause to impose income and replacement tax on Petitioner.

x. Petitioner exercised ordinary business care and prudence in determining whether it was subject to tax in this State.

y. Petitioner's position that it is not subject to tax in this State is supported by binding legal precedent of the United States Supreme Court.

z. By contrast, the Department's position that Petitioner is subject to tax in this State represents a novel interpretation of constitutional law in the area of state taxation of insurance.

aa. Any failure by Petitioner to file any required returns or pay any tax due at the required time was due to reasonable cause.

WHEREFORE, Petitioner prays that the Tribunal hear this case and determine that:

1. The Department erred as alleged in each assignment of error as set forth in paragraph 5 above;

2. There are no deficiencies in tax, penalties, or interest due from Petitioner for 2009 and 2010;

3. Petitioner is entitled to all correlative adjustments allowable by operation of law;

4. Petitioner is entitled to the correction of any mathematical, mechanical, computational, typographical, or other errors in the Notices; and

5. Petitioner is entitled to such other further relief as may be necessary and proper.

Respectfully submitted,


Peter W. Poulos
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Chicago, Illinois 60606
(312) 443-1873
ppoulos@lockelord.com
State Bar No. 6230066



John Costello

LOCKE LORD LLP

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State Bar No. 6281218

ATTORNEYS FOR PETITIONER

Dated: April 24, 2014

EXHIBIT A

NOTICE OF DEFICIENCY FOR 2009

Notice of Deficiency

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



February 28, 2014



Letter ID: CNXXX18499796166

#BWNKMGV
#CNXX X184 9979 6166#
BOM AMBIENTE INSURANCE CO
18500 N ALLIED WAY
PHOENIX AZ 85054-6164

Taxpayer ID: 98-0367546
Audit ID: A42250240
Reporting period: December 2009
Total Deficiency: \$54,945.35
Balance due: \$54,945.35



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 "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 this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to 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 deficiency 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 balance due 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,

Brian Hamer
Director

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

(217) 558-4960

Statement

Date: February 28, 2014
Name: BOM AMBIENTE INSURANCE CO
Taxpayer ID: 98-0367546
Letter ID: CNXXX18499796166

Reasons for deficiency

We have adjusted your insurance factor to reflect the correct premiums written. [35 ILCS 5/304(b)]

We determined your correct Illinois Income Tax because you did not file the appropriate Illinois Business Income Tax Return, as required by Illinois law.
[35 ILCS 5/502(a), 904(b)]

Penalties

We are imposing a late-filing or nonfiling penalty because you did not file a processable return by the due date (including any extended due date). This penalty is figured at the rate of 2 percent of the amount of tax required to be shown due on your return, after subtracting any payments made or credits allowed by the due date of the return. This penalty is imposed the day after the original due date of your return, including any extended due date. This penalty cannot exceed \$250.
[35 ILCS 735/3-3(a-10)] (for liabilities due on or after 1/1/2001)

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%.
[35 ILCS 735-/3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

Interest

Interest on tax in the amount of \$4,447.25 has been computed through February 28, 2014.

Statement

Date: February 28, 2014
 Name: BOM AMBIENTE INSURANCE CO
 Taxpayer ID: 98-0367546
 Letter ID: CNXXX18499796166

Computation of deficiency

Reporting Period: 31-Dec-2009

Income or loss	
Federal taxable income	\$10,069,344.00
Net operating loss deduction	\$0.00
Other additions	\$0.00
Income or loss	\$10,069,344.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$0.00
Business income or loss	\$10,069,344.00
Apportionment formula	
Total sales everywhere	\$70,144,104.00
Total Illinois sales	\$4,169,576.00
Apportionment factor	0.059443
Business income/loss apportionable to IL	\$598,552.00
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	\$598,552.00
Net income	
Base income or net loss	\$598,552.00
IL net loss deduction (NLD)	-\$0.00
Net income	\$598,552.00
Net replacement tax	
Replacement tax	\$14,964.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$14,964.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$14,964.00
Net income tax	
Income tax	\$28,730.00
Recapture of investment credits	\$0.00
Income tax before credits	\$28,730.00
Income tax investment credits	\$0.00
Net income tax	\$28,730.00
Refund or balance due	
Net replacement tax	\$14,964.00
Net income tax	\$28,730.00

Statement

Date: February 28, 2014
Name: BOM AMBIENTE INSURANCE CO
Taxpayer ID: 98-0367546
Letter ID: CNXXX18499796166

Total net income and replacement tax due	\$43,694.00
Total tax deficiency	\$43,694.00
Plus late-filing penalty	\$250.00
UPIA-5 late-payment penalty (Audit)	\$6,554.10
Plus interest on tax through February 28, 2014	\$4,447.25
Total deficiency	* \$54,945.35
If you intend to pay under protest, you must pay this total deficiency amount.	
Balance due	* \$54,945.35

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

EXHIBIT B

NOTICE OF DEFICIENCY FOR 2010

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

February 28, 2014



Letter ID: CNXXXX5X78X23366

#BWNKMGV
 #CNXX XX5X 78X2 3366#
 BOM AMBIENTE INSURANCE CO
 18500 N ALLIED WAY
 PHOENIX AZ 85054-6164

Taxpayer ID: 98-0367546
 Audit ID: A42250240
 Reporting period: December 2010
 Total Deficiency: \$168,762.50
 Balance due: \$168,762.50



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 "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 this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to 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 deficiency 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 balance due 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,

Brian Hamer
 Director

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

(217) 558-4960

Statement

Date: February 28, 2014
Name: BOM AMBIENTE INSURANCE CO
Taxpayer ID: 98-0367546
Letter ID: CNXXXX5X78X23366

Reasons for deficiency

We have adjusted your insurance factor to reflect the correct premiums written. [35 ILCS 5/304(b)]

We determined your correct Illinois Income Tax because you did not file the appropriate Illinois Business Income Tax Return, as required by Illinois law.
[35 ILCS 5/502(a), 904(b)]

Penalties

We are imposing a late-filing or nonfiling penalty because you did not file a processable return by the due date (including any extended due date). This penalty is figured at the rate of 2 percent of the amount of tax required to be shown due on your return, after subtracting any payments made or credits allowed by the due date of the return. This penalty is imposed the day after the original due date of your return, including any extended due date. This penalty cannot exceed \$250.
[35 ILCS 735/3-3(a-10)] (for liabilities due on or after 1/1/2001)

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%.
[35 ILCS 735-/3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

Interest

Interest on tax in the amount of \$8,849.95 has been computed through February 28, 2014.

Statement

Date: February 28, 2014
 Name: BOM AMBIENTE INSURANCE CO
 Taxpayer ID: 98-0367546
 Letter ID: CNXXXX5X78X23366

Computation of deficiency

Reporting Period: 31-Dec-2010

Income or loss	
Federal taxable income	\$32,149,123.00
Net operating loss deduction	\$0.00
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	\$32,149,123.00
Apportionment formula	
Total sales everywhere	\$63,643,429.00
Total Illinois sales	\$3,765,018.00
Apportionment factor	0.059158
Business income/loss apportionable to IL	\$1,901,878.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$0.00
Base income or net loss allocable to IL	\$1,901,878.00
Net income	
Base income or net loss	\$1,901,878.00
IL net loss deduction (NLD)	\$0.00
Net income	\$1,901,878.00
Net replacement tax	
Replacement tax	\$47,547.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$47,547.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$47,547.00
Net income tax	
Income tax	\$91,290.00
Recapture of investment credits	\$0.00
Income tax before credits	\$91,290.00
Income tax investment credits	\$0.00
Net income tax	\$91,290.00
Refund or balance due	
Net replacement tax	\$47,547.00
Net income tax	\$91,290.00

Statement

Date: February 28, 2014
Name: BOM AMBIENTE INSURANCE CO
Taxpayer ID: 98-0367546
Letter ID: CNXXXX5X78X23366

Total net income and replacement tax due	\$138,837.00
Total tax deficiency	\$138,837.00
Plus late-filing penalty	\$250.00
UPIA-5 late-payment penalty (Audit)	\$20,825.55
Plus interest on tax through February 28, 2014	\$8,849.95
Total deficiency	* \$168,762.50
If you intend to pay under protest, you must pay this total deficiency amount.	
Balance due	* \$168,762.50

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
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- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.