

7. The ICB upheld the Department's Notice of Proposed Deficiency, but determined that the Department could not impute any of IBM's research and development wages to WTC, as the employees were employed solely by IBM.

8. On November 21, 2014, IBM filed its petition with the Illinois Independent Tax Tribunal ("Tribunal") challenging the Department's Notices of Deficiency.

9. On April 22, 2015, the Department issued written discovery requests to IBM, consisting of 13 Interrogatories, 39 Requests for Production, and 2 Requests to Admit.

10. On May 19, 2015, IBM submitted a Response to the Department's Requests to Admit.

11. On June 24, 2015, IBM submitted a Response to the Department's Interrogatories and Requests for Production, which included 165 pages of documents.

12. On July 30, 2015 and August 6, 2015, IBM and the Department discussed both parties' initial discovery responses. IBM explained to the Department that many of its requests included confidential and sensitive taxpayer information. IBM agreed to produce additional documentation if a Protective Order was put in place.

13. On September 28, 2015, the Tribunal issued a Protective Order.

14. On October 2, 2015, IBM submitted a Supplemental Response to the Department's Interrogatories and Requests for Production, which included an additional 176 pages of documents.

15. Regarding the Department's production, the Department refused to provide its audit manual or documentation that the auditor had in her possession but did not rely on when making her determination. IBM filed a Motion to Compel on October 5, 2015 requesting these two items, which the Tribunal denied on October 6, 2015.

16. On October 22, 2015, pursuant to Illinois Supreme Court Rule 201(k), the Department sent a letter ("201(k) letter") to IBM requesting additional responses to the Department's voluminous discovery requests.

17. Many of the Department's requests related to the Department's misunderstanding of the Department's own audit and related facts, which IBM explained to the Department on multiple occasions.

18. On November 20, 2015, Petitioner submitted a Second Supplemental Response addressing the issues in the Department's 201(k) letter, including an additional 182 pages of documents. **Attached as Exhibit A (CONFIDENTIAL AND SUBJECT TO PROTECTIVE ORDER).**

19. On November 20, 2015, IBM and the Department participated in a status conference with the Tribunal. The Tribunal ordered the Department to determine whether IBM's Second Supplemental Response satisfied the Department's requests.

20. On December 17, 2015, the Department withdrew its Motion to Compel regarding Interrogatories 9 and 14; and Requests for Production 20, 21, and 22.

21. The Department, however, still pursues its Motion to Compel regarding 36 items—despite auditing IBM for approximately four years and IBM providing 1306 pages of documents. Further, many of the Department's requests result from the Department's misunderstanding of its own audit of IBM.

II. LAW

22. Illinois Supreme Court Rules permit discovery regarding “any matter *relevant* to the subject matter involved in the pending action.” Ill. S. Ct. R. 201(b)(1) (emphasis added).

23. Discovery is “relevant” if it will be admissible at trial, or if it will lead to admissible evidence. *TTX Co. v. Whitley*, 295 Ill. App. 3d 548, 556-57 (1st Dist. 1998) (denying discovery when the plaintiff sought tax information related to third parties).

24. A court should deny discovery “when there is insufficient evidence that the requested discovery is relevant.” *Id.* at 557.

25. “*Relevancy is determined by reference to the issues, for generally, something is relevant if it tends to prove or disprove something in issue.*” *Bauter v. Reding*, 68 Ill. App. 3d 171, 175 (3d Dist. 1979) (emphasis added).

26. It is undisputed that the sole issue in this case is whether 80% or more of WTC's combined property and payroll was outside the United States (*i.e.*, whether WTC was an “80/20 Company”).

27. During the four year audit and ICB process, the Department did not challenge or dispute WTC's reported foreign property or payroll. Instead, the Department relied on non-IBM documentation to impute additional U.S. property and payroll to WTC. The Department's Notice of Deficiency accepts WTC's reported foreign property and payroll, thus it is not an issue in this case.

28. The property fraction is a fraction comprised of a numerator, which is the average value of the United States real and tangible personal property owned or rented and used in the trade or business during the taxable year; and a denominator, which is the average value of all the real and tangible personal property owned or rented and used in the trade or business during the taxable year. 35 Ill. Comp. Stat. 5/304(a)(1)(A). The value of property is averaged using the beginning and end of year balances. 35 Ill. Comp. Stat. 5/304(a)(1)(C).

29. The payroll fraction is a fraction comprised of a numerator, which is the total compensation paid within the United States during the taxable year; and a denominator, which is the total compensation paid everywhere during the taxable year. 35 Ill. Comp. Stat. 5/304(a)(2)(A).

30. If the employer-employee relationship does not exist, any payment for services performed does not constitute “compensation.” Ill. Admin. Code tit. 86, § 100.3100(b).

31. Illinois regulations expressly provide that “employee” includes an individual performing services only if the relationship between the person and the entity for which the person performs such services is the “legal relationship of employer and employee.” *Id.*; *see also, Ill. Dep’t of Revenue v. Shanghai, Inc.*, IT 02-1 (Office of Admin. Hearings Feb. 7, 2002).

32. Furthermore, Illinois Supreme Court Rules 201(c) and 214(c) expressly permit the Tribunal to determine whether the likely burden or expense of the proposed discovery, including electronically stored information, outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

III. ANALYSIS

33. The Tribunal should deny the Department’s Motion to Compel because IBM has responded fully to the Department’s Interrogatories and Requests for Production regarding the sole issue in this case.

34. Further, the Department had its opportunity to audit IBM. In fact, the Department spent more than four years auditing IBM for the 2007 and 2008 tax years. It is improper for the Department to now attempt to re-audit IBM through the Tribunal’s discovery process.

35. The Department issued its Notice of Deficiency based on unverified information from websites, such as corporationwiki.com, manta.com, and hoover.com. The Department cannot now use the Tribunal’s discovery process to attempt to create new justifications for its unsupported Notice of Deficiency.

36. The Department issued extensive discovery requests—13 Interrogatories, 39 Requests for Production, and 2 Requests to Admit—and has taken an unreasonable approach regarding IBM’s responses.

37. The Department’s Motion to Compel requests information that is not relevant to the sole issue in this case—whether 80% or more of WTC’s property and payroll, as defined in Illinois statutes and regulations, were outside the United States for 2007 and 2008.

38. The Department fails to provide any compelling justification as to why the requests in its Motion to Compel are important to resolving the sole issue in this case.

39. Many of the Department’s requests relate to WTC’s foreign property and payroll, which the Department accepted during the audit. The Department attempts to adjust only WTC’s U.S. property and payroll. Therefore, none of the requests related to WTC’s foreign property and payroll are relevant to the sole issue in this case.

40. Even if any of the Department's requests were potentially relevant, which they are not, the costs and effort to obtain these documents would far outweigh any potential benefit. The Department requests voluminous documents from eight years ago, many of which relate to foreign entities, non-U.S. employees, property located in foreign jurisdictions, and other personal confidential information that is protected by foreign privacy laws.

A. The Department's Requests Related to WTC "Wages" Paid to IBM are Improper and Irrelevant (Interrogatory 3, and Requests 4, 10, 15, and 18).

41. The Department fundamentally misunderstands an adjustment made by its own auditor—despite IBM explaining the adjustment to the Department multiple times throughout the discovery process.

42. Interrogatory 3, and Requests 4, 10, 15, and 18, seek information regarding "the individuals that comprise the [REDACTED] for 2007 and [REDACTED] for 2008 of wages paid by WTC to IBM under the Shared Services Cost Sharing Amendments."

43. IBM responded fully to these requests multiple times. WTC did not pay wages to IBM. See, e.g., IBM's Second Supplemental Discovery Response, page 2.

44. The Department's auditor invented these "wage" amounts. It appears that the Department's auditor took IBM's research and development credit wages and attempted to allocate 50% of IBM's wages to WTC.

45. These amounts have no factual basis and are not supported by any document in IBM custody, possession, or control.

46. Even the ICB recognized that these amounts were not "wages" paid by WTC. The ICB expressly stated that the Department could not consider these amounts for purposes of the 80/20 determination. Informal Conference Board Action Decision dated June 25, 2014.

47. Furthermore, the Department fundamentally misunderstands the concept of a Cost Sharing Agreement. The Cost Sharing Agreements between IBM and WTC expressly state that IBM's employees are employees solely of IBM, and that WTC shall not have any direction or control over IBM's employees. See, e.g., Bates numbers IBM_0100, IBM_0137, and IBM_0158. The Cost Sharing Agreements never mention any "wages" because there are no wages paid by WTC to IBM—as IBM has explained to the Department multiple times.

48. Cost Sharing Agreements are expressly authorized by federal regulations, and are a preferred transfer pricing method to share costs between related parties for federal tax purposes. Furthermore, in IBM's earlier audit periods, the Department stated that it prefers Cost Sharing Agreements to royalty agreements for Illinois tax purposes.

49. The Department concedes that it is seeking wage information for employees that are solely IBM employees. Department's Motion to Compel, page 8.

50. As the Office of Administrative Hearings, and the ICB in this case, recognized, Illinois law states that the payroll factor includes an individual performing services only if the relationship between the person and the entity for which the person performs such services is the “legal relationship of employer and employee.” Ill. Admin. Code tit. 86, § 100.3100(b); Informal Conference Board Action Decision dated June 25, 2014; *Ill. Dep’t of Revenue v. Shanghai, Inc.*, IT 02-1 (Office of Admin. Hearings Feb. 7, 2002).

51. IBM responded fully to the Department’s requests (Interrogatory 3, and Requests 4, 10, 15, and 18): WTC did not pay wages to IBM.

52. Furthermore, the Department’s attempted justification to sidestep IBM’s clear response is irrelevant because any amounts paid by WTC to IBM under the Cost Sharing Agreement do not constitute “wages” under Illinois law, and are irrelevant to the 80/20 determination.

53. Therefore, the Tribunal should deny the Department’s Motion to Compel as to Interrogatory 3, and Requests 4, 10, 15, and 18.

B. IBM Responded Fully to the Department’s Requests

a. Interrogatory 4

54. IBM responded fully to Interrogatory 4. See Bates numbers IBM_0234 through IBM_0265. The WTC employee work locations are listed on Bates number IBM_0234 (see Note 2). IBM’s response to Interrogatory 4 also identifies the individuals that had the ultimate authority to direct the manner of each WTC employees’ performance of work. See Bates number IBM_0195.

55. Therefore, IBM responded fully and the Tribunal should deny the Department’s Motion to Compel as to Interrogatory 4.

b. Interrogatory 5

56. IBM responded fully to Interrogatory 5. See Bates numbers IBM_0195 and IBM_0234 through IBM_0265. The WTC officer work locations are listed on Bates Number 0195. The WTC employee work locations are listed on Bates number IBM_0234 (see Note 2).

57. IBM provided the relevant information requested; the U.S. real property locations where WTC officers and employees were located. Any additional information beyond what IBM provided is irrelevant and unduly burdensome. For example, the location of third party agents is completely irrelevant to the 80/20 determination. Furthermore, the Department’s definition of “agent” is overbroad.

58. Therefore, IBM responded fully and the Tribunal should deny the Department’s Motion to Compel as to Interrogatory 5.

c. Interrogatory 6

59. IBM responded fully to Interrogatory 6. See Bates numbers IBM_0195, which lists the work locations of WTC officers who were also IBM employees. Additionally, see Bates numbers IBM_308 through IBM_0341, which provide detail of WTC's real property.

60. IBM provided the relevant information requested; the U.S. real property locations where WTC officers who were also IBM employees were located, and detail regarding WTC's real property. Any additional information beyond what IBM provided is irrelevant and unduly burdensome.

61. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Interrogatory 6.

d. Interrogatory 7

62. IBM responded fully to Interrogatory 7. See Bates numbers IBM_308 through IBM_0341, which provide detail of WTC's real property.

63. IBM provided these schedules during the audit, and the auditor accepted them.

64. IBM stated that it has provided all information it is able to locate in response to this interrogatory, and that it will supplement its response if any additional information becomes available. See IBM's Second Supplemental Discovery Response, page 5.

65. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Interrogatory 7.

e. Interrogatory 8

66. IBM responded fully to Interrogatory 8, which seeks irrelevant information.

67. IBM stated that "IBM's activities performed in connection with the Shared Cost Services Agreement are not performed on behalf of WTC, and all property used by IBM in connection with the Shared Cost Services Agreement is not the property of WTC. This request is therefore irrelevant to determine whether WTC is an 80/20 company." See IBM's Second Supplemental Discovery Response, page 6.

68. As stated in paragraphs 47 and 48 above, the Department fundamentally misunderstands the concept of a Cost Sharing Agreement.

69. The 80/20 determination looks to the property and payroll of the entity in question, not a related entity. The Department's Interrogatory 8 is irrelevant and overbroad.

70. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Interrogatory 8.

f. Interrogatory 10

71. IBM responded fully to Interrogatory 10. See Bates numbers IBM_0308 through IBM_0341, which provide the amount of WTC's inventory in the United States (by state) and everywhere.

72. IBM's response provides all necessary information relevant to the 80/20 determination, which analyzes property location only at a national level (i.e., United States versus everywhere). Any further detail is irrelevant.

73. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Interrogatory 10.

g. Interrogatory 11

74. IBM responded fully to Interrogatory 11.

75. IBM provided a document that lists the real property locations at which the U.S. WTC employees performed services. See Bates number IBM_0234 (see Note 2).

76. IBM also provided job titles for all WTC employees (and job descriptions), and aggregate payroll. See Bates numbers IBM_0234 through IBM_0265; IBM_0308 through IBM_0341. Due to foreign privacy laws, IBM is not permitted to provide individual level salary information for WTC's foreign employees. However, such information is irrelevant to the 80/20 determination, which looks to aggregate U.S. payroll compared to everywhere payroll.

77. Furthermore, the Department did not challenge WTC's foreign property or payroll, and it is not an issue in this case.

78. IBM provided a detailed list of each division or branch of WTC. See Petitioner's Response to Interrogatory 9. See Bates numbers IBM_0510 through IBM_0515.

79. IBM's response provides all necessary information relevant to the 80/20 determination, which analyzes property location only at a national level (i.e., United States versus everywhere). Any further detail is irrelevant.

80. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Interrogatory 11.

h. Interrogatory 12

81. IBM responded fully to Interrogatory 12.

82. IBM stated that, during the Audit Period, WTC operated a network of foreign branches that employed hundreds of employees and at least fifty contractors outside the United States. WTC's branch employees outside the U.S. performed the functions enumerated in the Interrogatory, including sales, finance, human resources, marketing, sales operations, delivery, and customer service. Bates numbers IBM_0234 through IBM_0279 provide job titles, which support the above statement.

83. The additional details that the Department requests regarding the activities of WTC employees located at foreign branches are not relevant to determining whether WTC is an 80/20 company.

84. Additionally, WTC contracted with non-U.S. affiliates to provide sales, support, and other services on its behalf. See Bates numbers IBM_0516 through IBM_0523 for a sample agreement between WTC and a non-U.S. affiliate.

85. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Interrogatory 12.

i. Interrogatory 13

86. IBM responded fully to Interrogatory 13. See Bates numbers IBM_0308 through IBM_0341, which provide detail of WTC's property on a state by state basis.

87. IBM's response provides all information necessary relevant to the 80/20 determination, which analyzes property location only at a national level (i.e., United States versus everywhere). Any further detail is irrelevant.

88. Furthermore, IBM stated that it does not have the level of detail that the Department requests. See IBM's Second Supplemental Discovery Response, page 11.

89. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Interrogatory 13.

j. Request 4

90. Please see paragraphs 41-53, above.

91. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 4.

k. Request 5

92. IBM responded fully to Request 5. See Bates numbers IBM_0195 and IBM_0234 for the addresses at which the officers and employees of WTC performed their duties.

93. IBM objects to providing access to the real property locations where WTC employees performed duties in 2007 and 2008—eight years ago—because the request is unnecessary and not reasonably calculated to lead to the discovery of admissible evidence.

94. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 5.

l. Request 6

95. IBM responded fully to Request 6. See Bates numbers IBM_0056, which provides an organizational chart of the relevant entities.

96. The level of detail in an organizational chart that the Department seeks is not relevant to determining whether WTC is an 80/20 company. The entities relevant to this determination are included in the chart already provided. Additionally, Petitioner does not maintain a comprehensive worldwide organizational chart.

97. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 6.

m. Request 7

98. IBM responded fully to Request 7.

99. IBM stated that WTC officers did not have employment contracts with WTC during 2007 and 2008. See IBM's Discovery Responses at page 6.

100. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 7.

n. Request 10

101. Please see paragraphs 41-53, above.

102. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 10.

o. Request 11

103. IBM responded fully to Request 11. See Bates numbers IBM_0195, which provides a list of each WTC officer's job title.

104. IBM also stated that it does not have documentation of each WTC officer's duties or job description for 2007 and 2008. See IBM's Second Supplemental Discovery Response, page 15.

105. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 11.

p. Request 13

106. IBM responded fully to Request 13, as it is unduly burdensome and irrelevant.

107. The Department seeks all travel logs for WTC officers and hundreds of WTC employees for 2007 and 2008—eight years ago.

108. The costs and effort to obtain these travel logs, if they even existed, would far outweigh any potential benefit.

109. These travel records are also irrelevant to the 80/20 determination. The 80/20 determination looks to WTC's payroll in the United States versus its payroll everywhere. Regarding WTC officers, it is not in dispute that they were based in the United States. Regarding WTC employees, IBM provided documentation proving that 20 employees were based in the United States, and hundreds were based outside the United States. Therefore, these travel logs are irrelevant.

110. Furthermore, IBM responded that this request seeks information that is not in the possession or control of IBM.

111. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 13.

q. Request 14

112. IBM responded fully to Request 14, as it is unduly burdensome and irrelevant.

113. The Department seeks all travel and entertainment expenses paid by WTC.

114. The costs and effort to obtain these travel and entertainment expense records would far outweigh any potential benefit.

115. In fact, these travel and entertainment expense records are wholly irrelevant to the 80/20 determination. The Department submits no reasoning as to how these records are at all relevant to the sole issue in this case, nor can it.

116. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 14.

r. Request 15

117. Please see paragraphs 41-53, above.

118. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 15.

s. Request 16

119. IBM responded fully to Request 16. See Bates numbers IBM_0195, which provides a list of each WTC officer's name, job title, and location; and Bates number IBM_0234 and Bates numbers IBM_0266 through IBM_0280, which provides a list of each WTC employee's name, job title, and location.

120. IBM also stated that a WTC personnel directory for 2007 and 2008 does not exist. See IBM's Second Supplemental Discovery Response, page 17. Moreover, the documentation IBM provided includes all relevant information that would be included in a personnel directory.

121. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 16.

t. Request 18

122. Please see paragraphs 41-53, above.

123. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 18.

u. Request 19

124. IBM responded fully to Request 19. See Bates numbers IBM_0308 through 0341, which provides detail regarding WTC's property.

125. Furthermore, IBM stated that it is unable to locate information at the Department's requested level of detail, and that it will supplement its response if any additional information becomes available. See IBM's Second Supplemental Discovery Response, page 18.

126. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 19.

v. Request 23

127. IBM responded fully to Request 23. See Bates numbers IBM_0066, IBM_0070, and IBM_0075, which provide balance sheets and income statements from IBM's federal tax returns.

128. The Department's requested level of additional detail is irrelevant to the 80/20 determination.

129. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 23.

w. Request 24

130. IBM responded fully to Request 24.

131. IBM stated that it is not aware of any independent internal audits of WTC during 2007 and 2008. See IBM's Second Supplemental Discovery Response, page 22.

132. Furthermore, any internal audits of WTC are irrelevant to the 80/20 determination.

133. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 24.

x. Request 26

134. IBM responded fully to Request 26. See Bates numbers IBM_0166 through IBM_0194, which provide WTC's Board resolutions for 2007 and 2008.

135. IBM stated that there are no additional responsive documents other than those already provided. See IBM's Second Supplemental Discovery Response, page 22.

136. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 26.

y. Request 27

137. IBM responded fully to Request 27, as it is unduly burdensome and irrelevant.

138. IBM provided WTC's Board resolutions. However, IBM's Board minutes and other documents are not relevant to whether WTC was an 80/20 company. Even if they were relevant, obtaining these documents would be unduly burdensome.

139. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 27.

z. Request 28

140. IBM responded fully to Request 28. See Bates numbers IBM_0281 through IBM_0283, which provide general IBM square footage guidelines.

141. Additionally, IBM stated that it is unable to locate detailed square footage information for 2007 and 2008. IBM stated that during 2007 and 2008, it generally followed the guidelines that have been disclosed to the Department at the locations at which the WTC officers and employees performed services. The amount of square footage used by WTC officers and employees may be deduced from these guidelines. See IBM's Second Supplemental Discovery Response, page 23.

142. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 28.

aa. Request 30

143. IBM responded fully to Request 30.

144. IBM stated that WTC did not have employment manuals, policy and procedure guides, or handbooks during 2007 and 2008. See IBM's Supplemental Discovery Response, paragraph 15.

145. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 30.

bb. Request 31

146. IBM responded fully to Request 31. See Bates numbers IBM_0076 through IBM_0165, which provide the Cost Sharing Agreements between IBM and WTC, and Bates numbers IBM_0516 through IBM_0523, which provide a sample intercompany agreement.

147. IBM provided all relevant agreements between IBM and WTC. Sublicensing agreements between WTC and any subsidiary or affiliate of IBM are not relevant to determine whether WTC is an 80/20 company.

148. Additionally, to produce the hundreds of agreements that are not relevant to the 80/20 determination would be unduly burdensome and irrelevant. The costs and effort to obtain these agreements would far outweigh any potential benefit. The Department submits no reasoning as to how these records are at all relevant to the sole issue in this case, nor can it.

149. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 31.

cc. Request 32

150. IBM responded fully to Request 32.

151. [REDACTED] See IBM's Second Supplemental Discovery Response, page 25.

152. Additionally, the royalty rates that WTC charged the CFCs are not relevant for determining whether WTC is an 80/20 company. The Department submits no reasoning as to how transfer pricing studies are relevant to the sole issue in this case.

153. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 32.

dd. Request 33

154. IBM responded fully to Request 33, as it is unduly burdensome and irrelevant.

155. WTC's bank statements are not relevant to whether WTC was an 80/20 company.

156. Even if WTC's bank statements were relevant, the costs and effort to obtain these statements—from eight years ago—would far outweigh any potential benefit and potentially violate foreign privacy laws on the disclosure of banking information.

157. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 33.

ee. Request 34

158. IBM responded fully to Request 34, which requests documents pertaining to Interrogatory 5.

159. Please see section b. Interrogatory 5, above.

160. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 34.

ff. Request 35

161. IBM responded fully to Request 35, which requests documents pertaining to Interrogatory 6.

162. Please see section c. Interrogatory 6, above.

163. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 35.

gg. Request 36

164. IBM responded fully to Request 36, which requests documents pertaining to Interrogatory 7.

165. Please see section d. Interrogatory 7, above.

166. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 36.

hh. Request 37

167. IBM responded fully to Request 37, which requests documents pertaining to Interrogatory 8.

168. Please see section e. Interrogatory 8, above.

169. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 37.

ii. Request 38

170. IBM responded fully to Request 38.

171. IBM stated that it is not aware of any documents requested by the Department that have been destroyed. See IBM's Second Supplemental Discovery Response, page 27.

172. Therefore, IBM responded fully and the Tribunal should deny the Department's Motion to Compel as to Request 38.

IV. CONCLUSION

173. The Tribunal should deny the Department's Motion to Compel because IBM has responded fully to the Department's Interrogatories and Requests for Production.

174. In fact, IBM has provided 1306 pages of documents to the Department.

175. The Department's Motion to Compel requests information that is not relevant to the sole issue in this case—whether 80% or more of WTC's property and payroll, as defined in Illinois statutes and regulations, were outside the United States for 2007 and 2008.


176. The Department's Notice of Deficiency accepts WTC's reported foreign property and payroll, thus it is not an issue in this case.

177. Even if any of the Department's requests were potentially relevant, which they are not, the costs and effort to obtain these documents would far outweigh any potential benefit. The Department requests voluminous documents from eight years ago, many of which relate to foreign entities and are protected by foreign privacy laws.

178. Further, the Department had its opportunity to audit IBM. In fact, the Department spent approximately four years auditing IBM for the 2007 and 2008 tax years. It is improper for the Department to now attempt to re-audit IBM through the Tribunal's discovery process.

WHEREFORE, Petitioner respectfully requests that the Tribunal deny the Department's Motion to Compel. Petitioner also respectfully requests oral argument related to the Department's Motion to Compel.

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