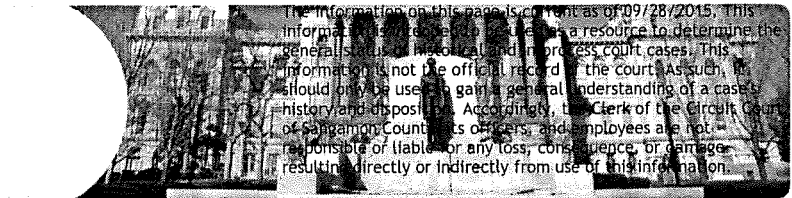




Paul Palazzolo

Circuit Clerk

Sangamon County, Illinois



Docket detail for case 2012-TX-0001/02:

Case: 2012-TX-0001/02 Type: Injunction Assigned Judge: SCHMIDT
 Filed: 04/25/2012 Status: Cause Stricken Report: Terminated

	Case Participant	Attorney
Plaintiff	CAPITAL ONE FINANCIAL CORPORAT	JAMES DUNN
	vs.	
Defendant	BRIAN HAMER; DIRECTOR OF THE I	
Defendant	DAN RUTHERFORD; TREASURER OF T	
04/25/2012	Injunction Fee: \$241.00	Plaintiff: CAPITAL ONE FINANCIAL CORPORAT
	Defendant: BRIAN HAMER; DIRECTOR OF THE I	
04/25/2012	Summons Issued	Plaintiff: CAPITAL ONE FINANCIAL CORPORAT
04/26/2012	Summons Served	Defendant: BRIAN HAMER; DIRECTOR OF THE I
	Defendant: DAN RUTHERFORD; TREASURER OF T	
04/27/2012	Preliminary Injunction Order	Apr 27, 2012 Signed Judge: SCHMIDT
04/27/2012	Certification of Service Filed by	Plaintiff's Attorney: JAMES DUNN
11/05/2012	Answer Filed by	
	Assistant Attorney General: OFFICE OF ATTORNEY GENERAL	
	Verified to Plaintiff's Complaint	
09/16/2013	Memorandum in Support of its Motion For Summary Judgment Filed by	Plaintiff's Attorney: JAMES DUNN
09/16/2013	Motion for Summary Judgment Filed by	
09/16/2013	Notice of Motion Filed by	Plaintiff's Attorney: JAMES DUNN
	Motion or Petition Hearing on Nov 7, 2013 at 2:00 PM	
01/31/2014	Notice of Deposition Filed by	
	Assistant Attorney General: OFFICE OF ATTORNEY GENERAL	
01/31/2014	Notice of Deposition Filed by	
	Assistant Attorney General: OFFICE OF ATTORNEY GENERAL	
01/31/2014	Notice of Deposition Filed by	
	Assistant Attorney General: OFFICE OF ATTORNEY GENERAL	
02/13/2014	Motion For A Protective Order and For A Hearing on Plaintiff's Motion	
	Filed by	
	For Summary Judgment	
03/12/2014	Response to Motion For Protective Order and For Hearing on Plaintiff's	
	Filed by Assistant Attorney General: OFFICE OF ATTORNEY GENERAL	
	Motion For Summary Judgment	
03/12/2014	Order for Hearing on Plaintiff's Motion for Protective Order Signed	
	Judge: SCHMIDT	
04/03/2014	Reply in Support of Motion For a Protective Order and For A Hearing	
	Filed by	
	On Plaintiff's Motion For Summary Judgment	

04/14/2014 Entry

Judge: SCHMIDT Clerk: JM

04/14/2014 Entry

Present for the Plaintiff by Attorney RUSKIN. Present for the Respondent by Attorney KMETT. Matter called on Plaintiff's Motion for Protective Order. Arguments heard. Plaintiff's Motion for Protective Order is allowed, provisionally. Respondent is to file a Motion pursuant to Supreme Court rule 191B supported by the Affidavit. Respondent is to file within 30 days. Plaintiff is given 30 days to respond. Parties are to set this matter for hearing.

Judge: SCHMIDT Clerk: JM

05/14/2014 Motion to Continue Filed by

Assistant Attorney General: OFFICE OF ATTORNEY GENERAL

The Motion For Summary Judgment to Allow Discovery

05/15/2014 Notice of Hearing Filed by

Assistant Attorney General: OFFICE OF ATTORNEY GENERAL

Motion or Petition Hearing on Jul 16, 2014 at 1:30 PM in Courtroom 6D

06/16/2014 Response in Objection to Defendant's Motion Filed by

07/16/2014 Entry Motion to Continue Motion for Summary Judgment

Present for the Petitioner by Attorney's WETHEKAM and KMETT. Present for the Respondent by Attorney's RUSKIN and LUTZE. Matter called on Plaintiff's Motion to Continue Motion for Summary Judgment. Arguments heard. Motion to Continue is allowed.

Judge: SCHMIDT Reporter: TH Clerk: JM

07/25/2014 Order on Defendant's Motion to Continue Motion for Summary Judgment

Signed Judge: SCHMIDT

07/30/2014 Motion for Preliminary Injunction Order Emergency Filed by

07/30/2014 Motion For Leave Filed by

To File First Amended Complaint

08/01/2014 Preliminary Injunction Order Aug 1, 2014 Signed Judge: BELZ

08/01/2014 Certification of Service Filed by Plaintiff's Attorney: JAMES DUNN

08/01/2014 Amended Complaint Filed by

Verified For Preliminary and Permanent Injunction and For Declaratory Judgment

01/09/2015 Order Regarding Briefing Schedule and Hearing Date Jan 9, 2015

Signed Judge: MADONIA

Tax Hearing on May 11, 2015 at 2:00 PM

03/16/2015 Defendants' Cross-Motion for Summary Judgment Filed by

Assistant Attorney General: OFFICE OF ATTORNEY GENERAL

03/16/2015 Defendants' Response to Plaintiff's Motion for Summary Judgment

Filed by Assistant Attorney General: OFFICE OF ATTORNEY GENERAL

03/16/2015 Memorandum in Support Filed by

Assistant Attorney General: OFFICE OF ATTORNEY GENERAL

Defendants' Memorandum in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment

04/14/2015 Response and Reply Filed by Plaintiff's Attorney: JAMES DUNN

Plaintiff's Response to Defendants' Cross-Motion for Summary Judgment and Reply to Plaintiff's Response to Plaintiff's Motion for Summary Judgment

05/05/2015 Notice of Hearing Filed by

Tax Hearing on May 11, 2015 at 2:00 PM

05/08/2015 Reply to Repsonse Filed by

Assistant Attorney General: OFFICE OF ATTORNEY GENERAL

Defendants' Reply to Plaintiff's Response to Defendant's Cross-Motion
for Summary Judgment

05/11/2015 Entry Judge: SCHMIDT

This matter comes on the plaintiff's motion for summary judgment and defendant's cross motion for summary judgment. Parties agree there are no material facts in dispute, thus the matter is ripe for summary judgment.

Two issues are presented. First, did plaintiff's subsidiary, Capitol One Bank, have sufficient nexus to Illinois so that its Illinois receipts could be considered income. Second, whether the deductions of dividends paid by plaintiff's real estate investment trusts (REIT's) from plaintiff's corporate income tax base were properly denied. The Court answers both questions in the affirmative. Before a foreign corporation's Illinois receipts can be taxed it must have a nexus to Illinois so not to violate the United States Constitution's the commerce clause. To survive Commerce Clause scrutiny the state must show: 1) there is a substantial nexus between out of state entity and the taxing state; 2) the tax is fairly apportioned; 3) the tax does not discriminate; 4) the tax is fairly related to the services provided by the state. *Quill v. North Dakota*, 504 US (1992).

At issue in this matter is the interpretation of the first prong, is there a substantial nexus between the out of state entity and the taxing state. The plaintiff argues this requires a physical presence in the state of Illinois. The defendant argues the proper test for "substantial nexus" is; rather or not the plaintiff has a significant economic presence in Illinois. See *Tax Comm'r v. MBNA*, 260 S.E. 2d. 226 (W. Va. 2006) The parties can point to no specific Illinois case interpreting substantial nexus as it is applied to corporate income tax. The Defendant urges the Court to adopt the significant economic presence test as being fairest test of corporate income tax given the current internet based world. The Court agrees. The test promulgated in *MBNA* is best suited to determine whether or not a foreign corporation has a substantial nexus with the taxing state. This test is fair, flexible and easily applied.

Capitol One Financial Corp. has a significant economic presence in Illinois. Specifically:

1. They collect millions of dollars in fees and interest from Illinois residents
2. They systematically and continuously engage Illinois consumers via the telephone, email, and direct mail solicitation to apply for credit
3. They use Illinois courts to recover debts on delinquent accounts
4. They file and enforce judgment liens in Illinois.

In sum, the plaintiff has significant economic presence in Illinois. Therefore, there is a substantial nexus between the plaintiff and the state of Illinois. As the other factors in *Quill* are not in dispute, the defendant's cross motion for summary judgment is allowed. The defendant properly denied the plaintiff's Illinois income tax deduction for REIT's dividends. There is no provision in Illinois Tax

law for such a deduction.

Defendants' cross motion for summary judgment on counts II, III, IV, and V is allowed. Plaintiff's motion for summary judgment on counts II, III, IV, and V is denied.

This is a final and appealable order with no just cause to delay its enforcement.

Judge: SCHMIDT Clerk: MP

06/04/2015 Notice of Appeal May 11, 2015 Filed by
Plaintiff and Attorney: CAPITAL ONE FINANCIAL CORPORAT & JAMES DUNN
Status: Case on Appeal Report: Appeal May 11, 2015
Denial of Plaintiff's Summary Judgment and granted Defendant's Motion
for Summary Judgment.
No attachment Order enclosed
Copy returned to Plaintiff/Appellant

06/04/2015 Copy of Notice of Appeal and Docket Sheet Mailed
Miscellaneous: MCLLELLAND

06/08/2015 Letter Requesting Preparation of Record on Appeal Filed by
Plaintiff's Attorney: JAMES DUNN

06/11/2015 Letter From Appellate Court to Appellee Re Docket Statement Filed by
4-15-0450

06/17/2015 Letter Regarding Filing of Transcripts Filed by

06/17/2015 Notice of Filing Filed by Plaintiff's Attorney: JAMES DUNN

06/17/2015 Notice of Filing Filed by Plaintiff's Attorney: JAMES DUNN
Corrected

06/17/2015 Transcript of Proceedings May 11, 2015 Filed by
US Legal Support

06/17/2015 Mandate Jun 15, 2015 Dismissed
Status: Cause Stricken Report: Terminated Jun 15, 2015
ON THE COURT'S OWN MOTION, the appeal is DISMISSED as it was docketed
in error. THIS ORDER IS THE MANDATE OF THE COURT. 4-15-0451

06/18/2015 Docketing Order Filed by
Notice of Appeal filed: 6/04/15
Report of Proceedings due to be filed: 7/23/15
Common Law Record due to be filed: 8/06/15
4-15-0450

06/22/2015 Table of Contents

08/06/2015 Certification of Record Filed by
4-15-0450

08/10/2015 Appellate Court-Notice to Counsel-Received Record on Appeal Filed by
4-15-0450