

ORIGINAL

Rec # 070763

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FILED
MAR 30 2010
U.S. COURT OF
FEDERAL CLAIMS

SALEM FINANCIAL, INC.,
as Successor-in-Interest to
Branch Investments LLC,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No.:

10-192 T

COMPLAINT

Salem Financial, Inc. ("Plaintiff"), as Successor-in-Interest to Branch Investments LLC ("Branch"), alleges the following on behalf of itself and the members of the affiliated group for which Branch filed consolidated U.S. federal income tax returns:

NATURE OF THE ACTION

1. This is an action arising under the Internal Revenue Code of 1986, as amended and codified in Title 26 of the United States Code, for recovery of \$688,110,924.80 in federal income taxes and penalties erroneously and illegally assessed against and collected from Plaintiff by the United States of America ("Defendant") for Branch's taxable years ending December 31, 2002, December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and June 15, 2007 (each a "Tax Year" and collectively the "2002-2007 Tax Years"), together with deficiency interest assessed on this amount and collected from Plaintiff, plus overpayment interest on the amount to be refunded, or such greater amount as is legally refundable.

2. Branch (EIN 51-0349647) timely filed consolidated Form 1120 U.S. Corporation Income Tax Returns for the 2002 Tax Year on September 12, 2003; for the 2003 Tax Year on

September 10, 2004; for the 2004 Tax Year on September 14, 2005; for the 2005 Tax Year on August 28, 2006; for the 2006 Tax Year on August 30, 2007, with a supplemental return for the 2006 Tax Year filed on September 14, 2007; and for the 2007 Tax Year on September 12, 2008 (each a “U.S. Tax Return” and collectively the “2002-2007 U.S. Tax Returns”). The name and address appearing on each of the returns were as follows:

2002 U.S. Tax Return: Branch Investments LLC
300 Delaware Ave, Ste 1211
Wilmington, DE 19801

2003-2007 U.S. Tax Returns: Branch Investments LLC
1007 Orange St, Nemours Bldg, Ste 1407
Wilmington, DE 19801

3. On March 26, 2009, Branch filed a Form 1120X Amended U.S. Corporation Income Tax Return for its 2006 Tax Year (the “2006 Amended U.S. Tax Return”). The name and address appearing on the return was as follows:

Branch Investments LLC & Subsidiaries
1007 Orange St, Nemours Bldg, Ste 1407
Wilmington, DE 19801

4. The 2002-2007 U.S. Tax Returns and the 2006 Amended U.S. Tax Return were each filed with the Internal Revenue Service Center, Ogden, Utah.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1491(a) and 26 U.S.C. § 7422.

6. Venue for this action is proper pursuant to 28 U.S.C. § 1491(a).

PARTIES

7. Plaintiff (EIN 26-0229198), a corporation organized under the laws of the State of Delaware, is an investment holding company, and is a wholly-owned subsidiary of Branch

Banking and Trust Company (“Bank”), a commercial bank chartered in the State of North Carolina.

8. Upon Branch’s merger with Plaintiff on February 28, 2009, Branch ceased to exist and Plaintiff became the successor-in-interest to Branch.

9. During the 2002-2007 Tax Years, Branch used an accrual method of accounting.

10. During the 2002-2007 Tax Years, Branch was a partially owned subsidiary of Bank.

11. During the 2002-2007 Tax Years, Bank was a wholly-owned subsidiary of BB&T Corporation (“BB&T”), a holding company that is organized under the laws of the State of North Carolina and that is engaged in a broad range of financial services through its subsidiaries.

12. Defendant is the United States of America.

FACTUAL BACKGROUND

13. The Bank, like most banks, earns a profit through the spread between the rate at which it borrows funds and the rate at which it is able to lend or invest those funds.

14. To maximize its profits and to stay competitive with other financial institutions, the Bank has historically attempted to borrow funds at the lowest possible rate that is available on acceptable terms from a variety of sources.

15. Plaintiff’s claims arise from the tax consequences of a \$1.5 billion secured financing provided by Barclays Bank plc (“Barclays”) to Bank, through Branch, at an interest rate approximately 2.9 percent below Bank’s normal cost of funds (the “Barclays Financing”).

16. Barclays, a corporation engaged in financial services and organized under the laws of England and Wales, was able to offer funding to the Bank at a rate below the Bank’s usual cost of funds because the Barclays Financing allowed Barclays to obtain certain U.K. tax benefits.

17. As a result of the Barclays Financing, Branch incurred a tax liability in the United Kingdom for which it claimed foreign tax credits on its 2002-2007 U.S. Tax Returns.

18. The foreign tax credits claimed by Branch relieved it from double taxation of its income.

Description of the Barclays Financing

19. Bank and its subsidiaries undertook the following steps to implement the Barclays Financing:

- a. On July 30, 2002, Bank contributed approximately \$5.75 billion to Branch, consisting of \$5.67 billion of income-producing assets (the "Assets") and \$80 million in cash.
- b. On July 30, 2002, Branch contributed approximately \$6.08 billion, consisting of the Assets and other financial assets and cash, to Branch Finance LLC ("DelCo") in exchange for all of the membership interests in DelCo, which included: Class 1 Ordinary Voting Shares worth approximately \$65 million ("DelCo Class 1 Shares") and Class 2 Ordinary Non-Voting Shares worth approximately \$6.015 billion ("DelCo Class 2 Shares"). DelCo was a newly formed Delaware limited liability company.
- c. On July 30, 2002, Branch contributed approximately \$89 million of financial assets and all of the DelCo Class 2 Shares to Branch Funding Trust (the "Trust") and subscribed for the Trust's Class A Units with an aggregate value of approximately \$4.6 billion and the Trust's Class B Unit valued at approximately \$1.5 billion. The Trust was newly formed under the laws of the State of Delaware.

- d. Delaware Trust Capital Management, Inc. (“Initial Trustee”), a preexisting corporation organized under the laws of Delaware, was initially appointed the trustee of the Trust. Branch Management LLC (“Manager”), a newly formed limited liability company organized under the laws of Delaware, was the manager of the Trust. Manager was wholly owned by Branch.
- e. On August 1, 2002, Branch contributed half of its Class A Units in the Trust to Branch Holdings LLC (“NewCo”), a newly formed limited liability company organized under the laws of Delaware. NewCo was wholly owned by Branch.
- f. On August 8, 2002, Branch Administrators Limited (“Trustee”) replaced the Initial Trustee as trustee of the Trust. Trustee was an entity newly formed under the laws of England and Wales. Trustee was owned by Branch and DelCo.

20. On August 1, 2002, Barclays subscribed for the Class C, D, and E Units in the Trust for \$1.5 billion (the “Barclays Subscription”).

21. On August 1, 2002, the Trust distributed the \$1.5 billion raised from the Barclays Subscription to Branch in complete redemption of the Class B Unit. Branch then lent the \$1.5 billion raised from the Barclays Subscription to two affiliates of Bank for use in their ordinary course of business.

22. Barclays and Branch executed two forward sale agreements (one with respect to the Class C Unit and Class E Unit and another with respect to the Class D Unit) pursuant to which Branch agreed to repurchase the Class C, D, and E Units from Barclays five years later for

a price equal to the total original subscription amount of \$1.5 billion plus an amount calculated by reference to a fixed interest rate (the "Forward Sale Agreements").

23. Barclays and Branch also executed a swap agreement (the "Swap Agreement") under which Branch's obligation (the "Floating Interest Obligation") was calculated by the product of (i) a notional principal amount of \$1.475 billion, and (ii) a floating rate tied to the 1-month London Interbank Offered Rate ("LIBOR"). The Floating Interest Obligation was reduced by a predetermined amount (the predetermined amount referred to as the "Barclays' Offset"). The Swap Agreement effectively converted Branch's fixed rate interest obligation payable at termination pursuant to the Class C Unit and Class E Unit Forward Sale Agreement into a floating rate interest obligation payable monthly. Barclays' Offset reduced the interest rate on the Barclays Financing to 2.9 percent below the Bank's normal cost of funds.

24. According to the terms of the Barclays Financing, whenever Branch's Floating Interest Obligation was greater than Barclays' Offset, Branch would make a net payment to Barclays. Conversely, whenever Branch's Floating Interest Obligation was less than Barclays' Offset, Branch would receive a net payment from Barclays equal to the difference between the two amounts.

- a. Based on the 1-month LIBOR rates in effect during the 2002-2005 Tax Years, Branch's Floating Interest Obligations during each of those years were less than Barclays' Offsets, and Barclays accordingly made net payments to Branch pursuant to the Swap Agreement.
- b. Based on the 1-month LIBOR rates in effect during the 2006-2007 Tax Years, Branch's Floating Interest Obligations during each of those years

were greater than Barclays' Offsets, and Branch accordingly made net payments to Barclays pursuant to the Swap Agreement.

25. The holder of the Class D Unit was entitled to monthly distributions calculated based on a variable interest rate tied to LIBOR on a principal amount of \$25 million (the "Class D Unit Distribution").

26. Together, the Barclays Subscription, the Forward Sale Agreements, the Swap Agreement, and the Class D Unit Distribution, in addition to other agreements between the parties, constituted the secured financing of \$1.5 billion that Barclays provided to Bank, through Branch. The Forward Sale Agreements, the Swap Agreement and the Class D Unit Distribution provided for the payment of interest on the \$1.5 billion financing.

27. The Barclays Financing terminated in April 2007.

U.S. Tax Reporting of the Barclays Financing

28. Pursuant to the terms of the Barclays Financing, the Class C, D, and E Units in the Trust were treated as owned by Branch for U.S. federal income tax purposes.

29. Pursuant to the requirements of U.K. tax law, the Trustee accrued and paid U.K. income taxes in the amount of \$498,161,951 on the income earned by the Trust during the 2002-2007 Tax Years.

30. Branch reported on its 2002-2007 U.S. Tax Returns gross income in the amount of \$2,276,785,213 as (i) foreign source income pursuant to the Internal Revenue Code and Article 23 of the 1975 U.S.-U.K. Tax Treaty or Article 24 of the 2001 U.S.-U.K. Tax Treaty,¹

¹ See Article 23, Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, U.S.-U.K., Dec. 31, 1975, 31 U.S.T. 5668 (the "1975 U.S.-U.K. Tax Treaty," which was in effect until March 31, 2003); Article 24, Convention for the Avoidance of Double Taxation and the Prevention of Fiscal

and (ii) “passive income” for purposes of the separate limitation categories under 26 U.S.C. § 904(d).

31. In the 2002-2007 Tax Years, Branch claimed \$498,161,951 of foreign income tax credits (the “Credits”) related to the Barclays Financing pursuant to 26 U.S.C. §§ 901 and 904, the Treasury Regulations promulgated thereunder, and Article 23 of the 1975 U.S.-U.K. Tax Treaty or Article 24 of the 2001 U.S.-U.K. Tax Treaty.

32. Branch treated its Floating Interest Obligation under the Swap Agreement as interest expense. Branch treated Barclays’ Offset under the Swap Agreement as reducing interest expense.

33. On its 2002-2005 U.S. Tax Returns, because Barclays’ Offsets were greater than Branch’s Floating Interest Obligations, Branch reported net interest income in the amount by which Barclays’ Offsets exceeded Branch’s Floating Interest Obligations on an accrual basis.

34. On its 2006-2007 U.S. Tax Returns, because Barclays’ Offsets were less than Branch’s Floating Interest Obligations, Branch reported net interest expense deductions in the amount by which its Floating Interest Obligations exceeded Barclays’ Offsets on an accrual basis (the “Interest Expense Deductions”).

35. Branch deducted on its 2002-2007 U.S. Tax Returns the professional fees and other transaction costs that it incurred with respect to the Barclays Financing as ordinary and necessary business expenses under 26 U.S.C. § 162 (the “Other Expense Deductions”).

36. For U.S. federal income tax purposes, the entities involved in the Barclays Financing were classified as follows:

Evasion with Respect to Taxes on Income and Capital Gains, U.S.-U.K., July 24, 2001, 2224 U.N.T.S. 247 (the “2001 U.S.-U.K. Tax Treaty,” which was effective as of March 31, 2003).

- a. Upon Branch's contribution of half of its Class A Units in the Trust to NewCo on August 1, 2002, the Trust was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(1)(i), with Branch and NewCo as its partners, and DelCo was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(1)(i), with Branch and the Trust as its partners.
- b. During the 2002-2004 Tax Years, NewCo elected to be treated as a corporation for U.S. federal income tax purposes and was part of the affiliated group for which Branch, as parent, filed U.S. federal income tax returns.
- c. During the 2002-2004 Tax Years, Trustee elected to be treated as a partnership for U.S. federal income tax purposes, with Branch and DelCo as its partners.
- d. Effective January 16, 2005, NewCo elected to be treated as a disregarded entity for U.S. federal income tax purposes. As a result, the Trust, DelCo, and the Trustee were treated as disregarded entities wholly owned by Branch for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(1)(ii) during the 2005-2007 Tax Years.
- c. During the 2002-2007 Tax Years, Manager elected to be treated as a corporation for U.S. federal income tax purposes and was part of the affiliated group for which Branch, as parent, filed U.S. federal income tax returns.

Procedural Facts Related to the 2006 Tax Year

37. On the September 14, 2007 supplemental 2006 U.S. Tax Return, Branch reduced its taxable income as originally reported by \$19,035,408 and requested that the resulting overpayment of \$7,419,588 be credited to its 2007 estimated tax. Of that amount, \$6,662,393 was not credited to the 2007 tax year or any other tax year or otherwise refunded to Branch.

38. On its 2006 Amended U.S. Tax Return, Branch claimed a refund for its 2006 Tax Year based on the carryback of excess foreign tax credits in the amount of \$4,847,121 from the 2007 Tax Year pursuant to 26 U.S.C. § 904(c).

Jurisdictional and Procedural Facts

39. Prior to the Barclays Financing, Branch was a wholly-owned subsidiary of Bank and was part of the affiliated group for which BB&T, as parent, filed consolidated U.S. federal income tax returns.

40. On August 1, 2002, Branch issued preferred shares representing 22 percent of its voting power to Asteras Holding LLC, a company unrelated to BB&T, in exchange for \$65 million and thereby ceased to be a member of the BB&T consolidated group for U.S. federal income tax purposes. Accordingly, Branch filed consolidated U.S. federal income tax returns in the 2002-2007 Tax Years.

41. On February 12, 2010, the Internal Revenue Service (“IRS”) issued a Notice of Deficiency making various adjustments related to Branch’s tax reporting of the Barclays Financing on the 2002-2007 U.S. Tax Returns.

42. The IRS also asserted accuracy-related penalties under 26 U.S.C. § 6662 for alleged underpayment of tax resulting from the substantial understatement of income tax or, alternatively, for negligence or disregard of rules or regulations.

43. Solely for purposes of satisfying the procedural prerequisites for filing administrative claims for refund and a lawsuit for refunds, Plaintiff executed Form 4089 (Notice of Deficiency Waiver), consenting to the immediate assessment and collection of the taxes, penalties, and deficiency interest associated with the following adjustments set forth in the Notice of Deficiency:

- a. for the 2002-2007 Tax Years, disallowance of the Credits in the total amount of \$493,314,830;
- b. for the 2002-2005 Tax Years, an increase in taxable income of \$169,551,912, the amount of Barclays' Offsets, and a decrease in taxable income of \$60,389,075, the amount of net payments received from Barclays under the Swap Agreement, for a net increase in taxable income of \$109,162,837, the amount of Branch's Floating Interest Obligations;
- c. for the 2006-2007 Tax Years, an increase in taxable income of \$70,543,026, the amount of Barclays' Offsets, plus disallowance of the Interest Expense Deductions in the amount of \$28,539,856, for a net increase in taxable income of \$99,082,882, the amount of Branch's Floating Interest Obligations (together with the adjustments described in Paragraph 43.b, the "Interest Expense Adjustments");
- d. for the 2007 Tax Year, disallowance of an additional interest expense deduction in the amount of \$4,759,846;
- e. for the 2002-2007 Tax Years, disallowance of the Other Expense Deductions in the total amount of \$7,514,643;

f. reclassification of \$2,276,785,213 of income reported as foreign source income in the 2002-2007 Tax Years as domestic source income;

g. imposition of accuracy-related penalties in the amount of \$112,766,903.

44. Pursuant to the terms of the Form 4089, Plaintiff reserved its right to file an administrative claim for refund and to sue for a refund.

45. In the Notice of Deficiency, the IRS also denied the \$4,847,121 refund claimed on the 2006 Amended U.S. Tax Return resulting from the carryback of excess foreign tax credits from the 2007 Tax Year.

46. Also in the Notice of Deficiency, the IRS reduced the proposed assessment for the 2006 Tax Year by the \$6,662,393 portion of the overpayment claimed on the supplemental 2006 Tax Return.

47. On March 1, 2010, the IRS assessed the taxes, penalties, and deficiency interest resulting from the IRS's adjustments for the 2002-2007 Tax Years, which Plaintiff satisfied by making full payment in the amount of \$884,735,418.49 on March 1, 2010 via the Electronic Federal Tax Payment System.

48. On March 15, 2010, Plaintiff filed administrative claims for refund with the IRS demanding refunds of the amounts—including taxes, penalties, and deficiency interest—erroneously assessed and collected by the IRS for the 2002-2007 Tax Years (the “2002-2007 Refund Claims”). The 2002-2007 Refund Claims are attached as Exhibits A-F, and each of the statements and contentions set forth in the 2002-2007 Refund Claims are incorporated by reference.

49. The IRS disallowed the 2002-2007 Refund Claims on March 25, 2010.

50. Although Plaintiff has demanded a refund of the amounts claimed in the 2002-2007 Refund Claims, no part of the taxes, penalties, or deficiency interest paid has been credited, remitted, refunded, or repaid to Plaintiff or to anyone on its account.

51. Plaintiff has made no transfer or assignment of the claims for relief in this Complaint and is the sole and absolute owner of the claims.

52. No action on the 2002-2007 Refund Claims has been taken by Congress or any agency of the United States, other than the IRS's disallowance of the 2002-2007 Refund Claims on March 25, 2010. There is no other suit or process pending in any other court with respect to these claims.

COUNT ONE (TAX YEAR 2002)

53. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 52.

54. For the reasons described below in paragraphs 55 through 73, Plaintiff is entitled to refunds in the amount of \$42,814,706 for taxes, \$8,562,941.20 for penalties, and \$25,357,048.35 for deficiency interest erroneously and illegally assessed and collected by Defendant for the 2002 Tax Year, plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

55. Neither the economic substance doctrine or any other related common-law doctrine, nor 26 U.S.C. § 269(a), applies to adjust Branch's tax reporting with respect to the Barclays Financing in the 2002 Tax Year.

Erroneous Denial of Foreign Tax Credits

56. The IRS erroneously disallowed all \$38,717,598 in Credits claimed by Branch on its 2002 U.S. Tax Return in connection with the Barclays Financing.

57. Branch properly claimed the Credits pursuant to 26 U.S.C. §§ 901 and 904, the Treasury Regulations promulgated thereunder, and Article 23 of the 1975 U.S.-U.K. Tax Treaty.

Erroneous Interest Expense Adjustments

58. By increasing Branch's taxable income in the 2002 Tax Year by the \$17,228,407 Barclays' Offset and decreasing Branch's taxable income by \$6,188,051, the amount of net payments received from Barclays under the Swap Agreement, the IRS erroneously increased Branch's taxable income by the amount of Branch's Floating Interest Obligation, \$11,040,356.

Erroneous Denial of Other Expense Deductions

59. The IRS erroneously disallowed \$665,667 of Other Expense Deductions claimed by Branch on its 2002 U.S. Tax Return.

60. The expenses giving rise to the Other Expense Deductions were ordinary and necessary business expenses that were deductible under 26 U.S.C. § 162, and accordingly Branch was entitled to the Other Expense Deductions.

Erroneous Reclassification of Foreign Source Income

61. The IRS erroneously reclassified \$166,008,392 of foreign source income reported on the 2002 U.S. Tax Return as domestic source income.

62. Branch properly reported on its 2002 U.S. Tax Return the \$166,008,392 of income related to the Barclays Financing as foreign source income pursuant to the Internal Revenue Code and Article 23 of the 1975 U.S.-U.K. Tax Treaty.

Erroneous Assertion of Penalties

63. The IRS erroneously imposed accuracy-related penalties pursuant to 26 U.S.C. § 6662(a) and (b)(2) in the amount of \$8,562,941.20 in connection with Branch's reporting of the Barclays Financing on its 2002 U.S. Tax Return.

64. Plaintiff is not subject to any 26 U.S.C. § 6662 penalties in connection with the Barclays Financing because Branch's tax positions, as set out above, were legally and factually correct.

65. Plaintiff is not subject to any penalty under 26 U.S.C. § 6662 because Branch had reasonable cause for, and acted in good faith with respect to, its tax return positions related to the Barclays Financing.

66. Plaintiff is not subject to a penalty for a substantial understatement of income tax because Branch had substantial authority for its tax return positions related to the Barclays Financing.

67. Plaintiff is not subject to a penalty for a substantial understatement of income tax because Branch adequately disclosed the relevant facts affecting its tax return positions related to the Barclays Financing and had more than a reasonable basis for such positions.

68. The substantial understatement of income tax asserted by the IRS is not attributable to a tax shelter because the principal purpose of the Barclays Financing was not to avoid or evade U.S. federal income taxes.

69. Plaintiff is not subject to a penalty for negligence because Branch made a reasonable attempt to comply with the Internal Revenue Code and Treasury Regulations and to exercise ordinary and reasonable care in the preparation of its 2002-2007 U.S. Tax Returns.

70. Plaintiff is not subject to a penalty for negligence because Plaintiff had more than a reasonable basis for its tax return positions related to the Barclays Financing.

71. Plaintiff is not subject to a penalty for disregard of rules or regulations because Branch did not carelessly, recklessly, or intentionally disregard any rule or regulation with respect to its tax return positions related to the Barclays Financing.

72. Plaintiff is not subject to a penalty for disregard of rules or regulations because Branch adequately disclosed its tax return positions related to the Barclays Financing.

73. Accordingly, Plaintiff is entitled to a refund of \$8,562,941.20 for penalties erroneously and illegally assessed and collected by Defendant for the 2002 Tax Year, together with interest assessed on this amount plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

COUNT TWO (TAX YEAR 2003)

74. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 73.

75. For the reasons described below in paragraphs 76 through 85, Plaintiff is entitled to refunds in the amount of \$105,576,404 for taxes, \$21,115,280.80 for penalties, and \$54,337,193.44 for deficiency interest erroneously and illegally assessed and collected by Defendant for the 2003 Tax Year, plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

76. Neither the economic substance doctrine or any other related common-law doctrine, nor 26 U.S.C. § 269(a), applies to adjust Branch's tax reporting with respect to the Barclays Financing in the 2003 Tax Year.

Erroneous Denial of Foreign Tax Credits

77. The IRS erroneously disallowed all \$97,267,663 in Credits claimed by Branch on its 2003 U.S. Tax Return in connection with the Barclays Financing.

78. Branch properly claimed the Credits pursuant to 26 U.S.C. §§ 901 and 904, the Treasury Regulations promulgated thereunder, and Article 23 of the 1975 U.S.-U.K. Tax Treaty.

Erroneous Interest Expense Adjustments

79. By increasing Branch's taxable income in the 2003 Tax Year by the \$48,046,716 Barclays' Offset and decreasing Branch's taxable income by \$25,939,609, the amount of net payments received from Barclays under the Swap Agreement, the IRS erroneously increased Branch's taxable income by the amount of Branch's Floating Interest Obligation, \$22,107,107.

Erroneous Denial of Other Expense Deductions

80. The IRS erroneously disallowed \$1,632,154 of Other Expense Deductions claimed by Branch on its 2003 U.S. Tax Return.

81. The expenses giving rise to the Other Expense Deductions were ordinary and necessary business expenses that were deductible under 26 U.S.C. § 162, and accordingly Branch was entitled to the Other Expense Deductions.

Erroneous Reclassification of Foreign Source Income

82. The IRS erroneously reclassified \$468,617,014 of foreign source income reported on the 2003 U.S. Tax Return as domestic source income.

83. Branch properly reported on its 2003 U.S. Tax Return the \$468,617,014 of income related to the Barclays Financing as foreign source income pursuant to the Internal Revenue Code and Article 23 of the 1975 U.S.-U.K. Tax Treaty and Article 24 of the 2001 U.S.-U.K. Tax Treaty.

Erroneous Assertion of Penalties

84. The IRS erroneously imposed accuracy-related penalties pursuant to 26 U.S.C. § 6662(a) and (b)(2) in the amount of \$21,115,280.80 in connection with Branch's reporting of the Barclays Financing on its 2003 U.S. Tax Return.

85. For the reasons stated in paragraphs 64 through 72, above, Plaintiff is entitled to a refund of \$21,115,280.80 for penalties erroneously and illegally assessed and collected by Defendant for the 2003 Tax Year, together with interest assessed on this amount plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

COUNT THREE (TAX YEAR 2004)

86. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 85.

87. For the reasons described below in paragraphs 88 through 97, Plaintiff is entitled to refunds in the amount of \$117,570,184 for taxes and \$23,514,036.80 for penalties erroneously and illegally assessed and collected by Defendant for the 2004 Tax Year, together with deficiency interest assessed on this amount plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

88. Neither the economic substance doctrine or any other related common-law doctrine, nor 26 U.S.C. § 269(a), applies to adjust Branch's tax reporting with respect to the Barclays Financing in the 2004 Tax Year.

Erroneous Denial of Foreign Tax Credits

89. The IRS erroneously disallowed all \$108,436,039 in Credits claimed by Branch on its 2004 U.S. Tax Return in connection with the Barclays Financing.

90. Branch properly claimed the Credits pursuant to 26 U.S.C. §§ 901 and 904, the Treasury Regulations promulgated thereunder, and Article 24 of the 2001 U.S.-U.K. Tax Treaty.

Erroneous Interest Expense Adjustments

91. By increasing Branch's taxable income in the 2004 Tax Year by the \$50,891,300 Barclays' Offset and decreasing Branch's taxable income by \$26,415,794, the amount of net

payments received from Barclays under the Swap Agreement, the IRS erroneously increased Branch's taxable income by the amount of Branch's Floating Interest Obligation, \$24,475,506.

Erroneous Denial of Other Expense Deductions

92. The IRS erroneously disallowed \$1,622,052 of Other Expense Deductions claimed by Branch on its 2004 U.S. Tax Return.

93. The expenses giving rise to the Other Expense Deductions were ordinary and necessary business expenses that were deductible under 26 U.S.C. § 162, and accordingly Branch was entitled to the Other Expense Deductions.

Erroneous Reclassification of Foreign Source Income

94. The IRS erroneously reclassified \$479,843,873 of foreign source income reported on the 2004 U.S. Tax Return as domestic source income.

95. Branch properly reported on its 2004 U.S. Tax Return the \$479,843,873 of income related to the Barclays Financing as foreign source income pursuant to the Internal Revenue Code and Article 24 of the 2001 U.S.-U.K. Tax Treaty.

Erroneous Assertion of Penalties

96. The IRS erroneously imposed accuracy-related penalties pursuant to 26 U.S.C. § 6662(a) and (b)(2) in the amount of \$23,514,036.80 in connection with Branch's reporting of the Barclays Financing on its 2004 U.S. Tax Return.

97. For the reasons stated in paragraphs 64 through 72, above, Plaintiff is entitled to a refund of \$23,514,036.80 for penalties erroneously and illegally assessed and collected by Defendant for the 2004 Tax Year, together with interest assessed on this amount plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

COUNT FOUR (TAX YEAR 2005)

98. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 97.

99. For the reasons described below in paragraphs 100 through 109, Plaintiff is entitled to refunds in the amount of \$128,925,758 for taxes, \$25,785,151.60 for penalties, and \$42,624,823.82 for deficiency interest erroneously and illegally assessed and collected by Defendant for the 2005 Tax Year, plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

100. Neither the economic substance doctrine or any other related common-law doctrine, nor 26 U.S.C. § 269(a), applies to adjust Branch's tax reporting with respect to the Barclays Financing in the 2005 Tax Year.

Erroneous Denial of Foreign Tax Credits

101. The IRS erroneously disallowed all \$110,319,157 in Credits claimed by Branch on its 2005 U.S. Tax Return in connection with the Barclays Financing.

102. Branch properly claimed the Credits pursuant to 26 U.S.C. §§ 901 and 904, the Treasury Regulations promulgated thereunder, and Article 24 of the 2001 U.S.-U.K. Tax Treaty.

Erroneous Interest Expense Adjustments

103. By increasing Branch's taxable income in the 2005 Tax Year by the \$53,385,489 Barclays' Offset and decreasing Branch's taxable income by \$1,845,621, the amount of net payments received from Barclays under the Swap Agreement, the IRS erroneously increased Branch's taxable income by the amount of Branch's Floating Interest Obligation, \$51,539,868.

Erroneous Denial of Other Expense Deductions

104. The IRS erroneously disallowed \$1,621,847 of Other Expense Deductions claimed by Branch on its 2005 U.S. Tax Return.

105. The expenses giving rise to the Other Expense Deductions were ordinary and necessary business expenses that were deductible under 26 U.S.C. § 162, and accordingly Branch was entitled to the Other Expense Deductions.

Erroneous Reclassification of Foreign Source Income

106. The IRS erroneously reclassified \$533,833,963 of foreign source income reported on the 2005 U.S. Tax Return as domestic source income.

107. Branch properly reported on its 2005 U.S. Tax Return the \$533,833,963 of income related to the Barclays Financing as foreign source income pursuant to the Internal Revenue Code and Article 24 of the 2001 U.S.-U.K. Tax Treaty.

Erroneous Assertion of Penalties

108. The IRS erroneously imposed accuracy-related penalties pursuant to 26 U.S.C. § 6662(a) and (b)(2) in the amount of \$25,785,151.60 in connection with Branch's reporting of the Barclays Financing on its 2005 U.S. Tax Return.

109. For the reasons stated in paragraphs 64 through 72, above, Plaintiff is entitled to a refund of \$25,785,151.60 for penalties erroneously and illegally assessed and collected by Defendant for the 2005 Tax Year, together with interest assessed on this amount plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

COUNT FIVE (TAX YEAR 2006)

110. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 109.

111. For the reasons described below in paragraphs 112 through 121, Plaintiff is entitled to refunds in the amount of \$144,201,222 for taxes, \$26,538,341.60 for penalties, and \$29,668,310.60 for deficiency interest erroneously and illegally assessed and collected by

Defendant for the 2006 Tax Year, plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

112. Neither the economic substance doctrine or any other related common-law doctrine, nor 26 U.S.C. § 269(a), applies to adjust Branch's tax reporting with respect to the Barclays Financing in the 2006 Tax Year.

Erroneous Denial of Foreign Tax Credits

113. The IRS erroneously disallowed all \$111,347,911 in Credits claimed by Branch on its 2006 U.S. Tax Return and the \$4,847,121 in Credits claimed by Branch on its Amended 2006 U.S. Tax Return in connection with the Barclays Financing.

114. Branch properly claimed the Credits pursuant to 26 U.S.C. §§ 901 and 904, the Treasury Regulations promulgated thereunder, and Article 24 of the 2001 U.S.-U.K. Tax Treaty.

Erroneous Interest Expense Adjustments

115. By increasing Branch's taxable income in the 2006 Tax Year by the \$56,227,114 Barclays' Offset and by disallowing the \$22,277,060 Interest Expense Deduction claimed by Branch, the IRS erroneously increased Branch's taxable income by the amount of Branch's Floating Interest Obligation, \$78,504,174.

Erroneous Denial of Other Expense Deductions

116. The IRS erroneously disallowed \$1,513,513 of Other Expense Deductions claimed by Branch on its 2006 U.S. Tax Return.

117. The expenses giving rise to the Other Expense Deductions were ordinary and necessary business expenses that were deductible under 26 U.S.C. § 162, and accordingly Branch was entitled to the Other Expense Deductions.

Erroneous Reclassification of Foreign Source Income

118. The IRS erroneously reclassified \$519,111,003 of foreign source income reported on the 2006 U.S. Tax Return as domestic source income.

119. Branch properly reported on its 2006 U.S. Tax Return the \$519,111,003 of income related to the Barclays Financing as foreign source income pursuant to the Internal Revenue Code and Article 24 of the 2001 U.S.-U.K. Tax Treaty.

Erroneous Assertion of Penalties

120. The IRS erroneously imposed accuracy-related penalties pursuant to 26 U.S.C. § 6662(a) and (b)(2) in the amount of \$26,538,341.60 in connection with Branch's reporting of the Barclays Financing on its 2006 U.S. Tax Return.

121. For the reasons stated in paragraphs 64 through 72, above, Plaintiff is entitled to a refund of \$26,538,341.60 for penalties erroneously and illegally assessed and collected by Defendant for the 2006 Tax Year, together with interest assessed on this amount plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

COUNT SIX (TAX YEAR 2007)

122. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 121.

123. For the reasons described below in paragraphs 124 through 134, Plaintiff is entitled to refunds in the amount of \$36,255,749 for taxes, \$7,251,149.80 for penalties, and \$5,825,960.06 for deficiency interest erroneously and illegally assessed and collected by Defendant for the 2007 Tax Year, plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

124. Neither the economic substance doctrine or any other related common-law doctrine, nor 26 U.S.C. § 269(a), applies to adjust Branch's tax reporting with respect to the Barclays Financing in the 2007 Tax Year.

Erroneous Denial of Foreign Tax Credits

125. The IRS erroneously disallowed all \$27,226,462 in Credits claimed by Branch on its 2007 U.S. Tax Return in connection with the Barclays Financing.

126. Branch properly claimed the Credits pursuant to 26 U.S.C. §§ 901 and 904, the Treasury Regulations promulgated thereunder, and Article 24 of the 2001 U.S.-U.K. Tax Treaty.

Erroneous Interest Expense Adjustments

127. By increasing Branch's taxable income in the 2007 Tax Year by the \$14,315,912 Barclays' Offset and by disallowing the \$6,262,796 Interest Expense Deduction claimed by Branch, the IRS erroneously increased Branch's taxable income by the amount of Branch's Floating Interest Obligation, \$20,578,708.

128. In addition, the IRS erroneously disallowed a \$4,759,846 interest expense deduction related to the unwind of the Barclays Financing. Branch was entitled to deduct \$4,759,846 in interest expense because it represents interest on genuine indebtedness that was deductible under 26 U.S.C. § 163.

Erroneous Denial of Other Expense Deductions

129. The IRS erroneously disallowed \$459,410 of Other Expense Deductions claimed by Branch on its 2007 U.S. Tax Return.

130. The expenses giving rise to the Other Expense Deductions were ordinary and necessary business expenses that were deductible under 26 U.S.C. § 162, and accordingly Branch was entitled to the Other Expense Deductions.

Erroneous Reclassification of Foreign Source Income

131. The IRS erroneously reclassified \$109,370,968 of foreign source income reported on the 2007 U.S. Tax Return as domestic source income.

132. Branch properly reported on its 2007 U.S. Tax Return the \$109,370,968 of income related to the Barclays Financing as foreign source income pursuant to the Internal Revenue Code and Article 24 of the 2001 U.S.-U.K. Tax Treaty.

Erroneous Assertion of Penalties

133. The IRS erroneously imposed accuracy-related penalties pursuant to 26 U.S.C. § 6662(a) and (b)(2) in the amount of \$7,251,149.80 in connection with Branch's reporting of the Barclays Financing on its 2007 U.S. Tax Return.

134. For the reasons stated in paragraphs 64 through 72, above, Plaintiff is entitled to a refund of \$7,251,149.80 for penalties erroneously and illegally assessed and collected by Defendant for the 2007 Tax Year, together with interest assessed on this amount plus overpayment interest on the amounts to be refunded, or such greater amount as is legally refundable.

COUNT SEVEN – ALTERNATIVE CLAIM

135. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 134.

136. As set forth in Counts One through Six, Plaintiff is entitled to the full amount of the Credits. In the alternative, however, to the extent it is determined that any of the Credits were properly disallowed, Plaintiff is entitled to a deduction for such disallowed Credits under 26 U.S.C. § 162 or § 164 for U.K. income taxes paid in connection with the Barclays Financing.

137. Consequently, and in the alternative, to the extent that any of the Credits were properly disallowed, Plaintiff is entitled to a refund up to the amount of \$174,356,683 for taxes paid.

COUNT EIGHT – ALTERNATIVE CLAIM

138. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 137.

139. As set forth in Counts One through Six, Plaintiff is entitled to the full amount of the Credits. In the alternative, however, to the extent it is determined that any of the Credits were properly disallowed, then Plaintiff is entitled to elimination of the corresponding gross income reported by Branch on the 2002-2007 U.S. Tax Returns up to the amount of \$2,276,785,213.

COUNT NINE – ALTERNATIVE CLAIM

140. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 139.

141. As set forth in Counts One through Six, Plaintiff is entitled to the full amount of the Credits, and Branch's tax reporting of its Floating Interest Obligations and Barclays' Offsets was correct. In the alternative, however, to the extent it is determined that any of the Credits were properly disallowed or if the Interest Expense Adjustments are sustained, then Plaintiff is entitled to eliminate the total amount of Barclays' Offsets from taxable income in the 2002-2007 Tax Years in the amount of \$240,094,938.

142. Consequently, and in the alternative, Plaintiff is entitled to a refund up to the amount of \$84,033,228 for taxes paid.

COUNT TEN – ALTERNATIVE CLAIM

143. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 142 as if fully stated herein.

144. The IRS's erroneous Interest Expense Adjustments are based on a cash method of reporting. Branch, however, was an accrual method taxpayer. If it is determined that the IRS's Interest Expense Adjustments were correct, then Plaintiff is nevertheless entitled to a refund to the extent that the IRS's adjustments exceed the income and expenses accrued and reported by Branch in each of the 2002-2007 Tax Years.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

(1) On the claims for relief in Count One, judgment in favor of Plaintiff against Defendant in the amount of \$76,734,695.55 or such greater amount as the Court determines to be legally refundable, plus overpayment interest thereon, as provided by law;

(2) On the claims for relief in Count Two, judgment in favor of Plaintiff against Defendant in the amount of \$181,028,878.24 or such greater amount as the Court determines to be legally refundable, plus overpayment interest thereon, as provided by law;

(3) On the claims for relief in Count Three, judgment in favor of Plaintiff against Defendant in the amount of \$141,084,220.80 plus deficiency interest assessed on this amount, or such greater amount as the Court determines to be legally refundable, plus overpayment interest thereon, as provided by law;

(4) On the claims for relief in Count Four, judgment in favor of Plaintiff against Defendant in the amount of \$197,335,733.42 or such greater amount as the Court determines to be legally refundable, plus overpayment interest thereon, as provided by law;

(5) On the claims for relief in Count Five, judgment in favor of Plaintiff against Defendant in the amount of \$200,407,874.20 or such greater amount as the Court determines to be legally refundable, plus overpayment interest thereon, as provided by law;

(6) On the claims for relief in Count Six, judgment in favor of Plaintiff against Defendant in the amount of \$49,332,858.86 or such greater amount as the Court determines to be legally refundable, plus overpayment interest thereon, as provided by law;

(7) In the alternative, on the claim for relief in Count Seven, judgment in favor of Plaintiff against Defendant in the amount of \$174,356,683, or such greater amount as the Court determines to be legally refundable, plus overpayment interest thereon as provided by law;

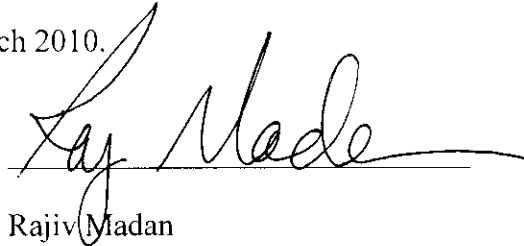
(8) In the alternative, on the claim for relief in Count Eight, judgment in favor of Plaintiff against Defendant in the amount of refund Plaintiff would be entitled to by the elimination of \$2,276,785,213 of gross income, or such greater amount as the Court determines to be legally refundable, plus overpayment interest thereon as provided by law;

(9) In the alternative, on the claim for relief in Count Nine, judgment in favor of Plaintiff against Defendant in the amount of \$84,033,228, or such greater amount as the Court determines to be legally refundable, plus overpayment interest thereon as provided by law;

(10) In the alternative, on the claim for relief in Count Ten, judgment in favor of Plaintiff against Defendant in the amount of refund Plaintiff would be entitled to had the IRS's Interest Expense Adjustments been based on Branch's accrual method of reporting, or such greater amount as the Court determines to be legally refundable, plus overpayment interest thereon as provided by law;

(11) Plaintiff's costs of this action, and such other and further relief as the Court deems appropriate.

Respectfully submitted this 30th day of March 2010.

A handwritten signature in black ink, appearing to read "Raj Madan", written over a horizontal line.

Rajiv Madan
Attorney of Record for Plaintiff

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Exhibit A

Form **1120X**
 (Rev. January 2008)
 Department of the Treasury
 Internal Revenue Service

**Amended U.S. Corporation
 Income Tax Return**

OMB No. 1545-0132

For tax year ending

2002/12

(Enter month and year.)

Please Type or Print	Name	SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC	Employer identification number	51-0349647
	Number, street, and room or suite no. (If a P.O. box, see instructions.)			
	P.O. BOX 483			
	City or town, state, and ZIP code	WINSTON-SALEM, NC 27102	Telephone number (optional)	

Enter name and address used on original return (If same as above, write "Same.")

BRANCH INVESTMENTS LLC 300 DELAWARE AVE, STE 1211 WILMINGTON, DE 19801 EIN: 51-0349647

Internal Revenue Service Center where original return was filed
 OGDEN, UT

Fill in applicable items and use Part II on the back to explain any changes

Part I	Income and Deductions (see instructions)	(a) As originally reported or as previously adjusted	(b) Net change— increase or (decrease)— explain in Part II	(c) Correct amount
1	Total income (Form 1120 or 1120-A, line 11)	188,089,380	-11,040,356	177,049,024
2	Total deductions (total of lines 27 and 29c, Form 1120, or lines 23 and 25c, Form 1120-A)	4,035,984	665,667	4,701,651
3	Taxable income. Subtract line 2 from line 1	184,053,396	-11,706,023	172,347,373
4	Tax (Form 1120, line 31, or Form 1120-A, line 27)	64,418,689	-42,814,706	21,603,983

Payments and Credits (see instructions)

5 a	Overpayment in prior year allowed as a credit	5a		
b	Estimated tax payments	5b	35,000,000	35,000,000
c	Refund applied for on Form 4466	5c		
d	Subtract line 5c from the sum of lines 5a and 5b	5d	35,000,000	0
e	Tax deposited with Form 7004	5e		
f	Credit from Form 2439	5f		
g	Credit for federal tax on fuels and other refundable credits	5g		
6	Tax deposited or paid with (or after) the filing of the original return	6		42,814,706
7	Add lines 5d through 6, column (c)	7		77,814,706
8	Overpayment, if any, as shown on original return or as later adjusted	8		13,396,017
9	Subtract line 8 from line 7	9		64,418,689

Tax Due or Overpayment (see instructions)

10	Tax due. Subtract line 9 from line 4, column (c). If paying by check, make it payable to the "United States Treasury"	10		0
11	Overpayment. Subtract line 4, column (c), from line 9	11		42,814,706
12	Enter the amount of line 11 you want: Credited to 20 <u> </u> estimated tax Refunded	12		42,814,706

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here
 Signature of officer: *Quinn K. Jones* | Date: *3-15-2010* | Title: *Vice President + Treasurer*

Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Phone no.	

Form **843**
 (Rev. February 2009)
 Department of the Treasury
 Internal Revenue Service

Claim for Refund and Request for Abatement

OMB No. 1545-0024

▶ See separate instructions.

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes and an employer's claim for FICA tax, RRTA tax, or income tax withholding), shown on line 3,
- (b) an abatement of FUTA tax or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

Do not use Form 843 if your claim or request involves:

- (a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Name(s) SALEM FINANCIAL INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC	Your social security number
Address (number, street, and room or suite no.) P.O. BOX 483	Spouse's social security number
City or town, state, and ZIP code WINSTON-SALEM, NC 27102	Employer identification number (EIN) 51 0349647
Name and address shown on return if different from above BRANCH INVESTMENTS LLC, 300 DELAWARE AVE, STE 1211, WILMINGTON, DE 19801	Daytime telephone number ()

1 Period. Prepare a separate Form 843 for each tax period From 08 / 01 / 2002 to 12 / 31 / 2002	2 Amount to be refunded or abated \$ 8,562,941.20
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3 **Type of tax.** Indicate the type of tax to be refunded or abated or to which the interest, penalty, or addition to tax is related.
 Employment Estate Gift Excise Income

4 **Type of penalty.** If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: **6662(a)**

5a **Interest, penalties, and additions to tax.** Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.)
 Interest was assessed as a result of IRS errors or delays.
 A penalty or addition to tax was the result of erroneous written advice from the IRS.
 Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.

b Date(s) of payment(s) ▶ **03/01/2010**

6 **Original return.** Indicate the type of return filed to which the tax, interest, penalty, or addition to tax relates.
 706 709 940 941 943 945
 990-PF 1040 1120 4720 Other (specify) ▶

7 **Explanation.** Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.

See attached

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Julie A. Jones, Vice President - Treasurer 3-15-2010
 Signature (Title, if applicable. Claims by corporations must be signed by an officer.) Date

Signature (spouse, if joint return) Date

Paid Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code ▶	EIN	Phone no. ()	

Salem Financial, Inc. as Successor in Interest to Branch Investments LLC
EIN: 51-0349647

Attachment to Form 1120X and Form 843

This claim is being filed to correct the employer identification number (EIN) listed on Form 1120X and Form 843 from the claim originally filed on March 11, 2010 under EIN: 26-0229198 and should supersede that claim.

**SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO
BRANCH INVESTMENTS LLC**

Claim for Refund

Tax Year: 2002

Tax: \$42,814,706

Penalty: \$8,562,941.20

Interest: \$25,357,048.35

Total Amount of Claim for Refund: \$76,734,695.55 plus interest, or such greater amount as is legally refundable.

Procedural History

On September 12, 2003, Branch Investments LLC and Subsidiaries (“Branch”) timely filed its consolidated U.S. federal income tax return for the short taxable year August 1, 2002 through December 31, 2002 (the “2002 Tax Year”). After examining Branch’s return for the 2002 Tax Year, the Internal Revenue Service (“IRS”) proposed various adjustments, described below, related to a financing provided by Barclays Bank PLC (“Barclays”) (referred to as the “Barclays Financing”). (*See Exhibit A (Forms 5701 for issues IE-001; IE-002; IE-003; IE-004; IE-005; IE-006 (Aug. 4, 2009)).*)

On February 28, 2009, Branch merged with Salem Financial, Inc. This merger caused Branch to cease to exist. As a result, Salem Financial, Inc. (“Salem”) is the appropriate party to file this administrative claim for refund as the successor in interest to Branch.

On February 12, 2010, the IRS issued a Statutory Notice of Deficiency for the 2002 Tax Year to Branch Investments LLC and Subsidiaries c/o Salem Financial, Inc. (Exhibit B.) The Notice of Deficiency made the following adjustments related to the Barclays Financing:

- (1) disallowed foreign tax credits claimed under section 901 in the amount of \$38,717,598;
- (2) increased taxable income by \$17,228,407 for fee income purportedly received by Branch and reduced taxable income by \$6,188,051 for interest income received by Branch, for a net increase in taxable income of \$11,040,356;
- (3) disallowed deductions for transaction costs claimed under section 162 in the amount of \$665,667;
- (4) reclassified \$166,008,392 of foreign source income as domestic source income; and
- (5) imposed a penalty under section 6662 in the amount of \$8,562,941.20.

On February 16, 2010, Salem executed Form 4089 in which it consented to the immediate assessment of tax in the amount of \$42,814,706 and to the imposition of penalties in the amount of \$8,562,941.20 for the 2002 Tax Year. (Exhibit C.) Pursuant to the terms of the Form 4089, Salem reserved the right to file a claim for refund.

On March 1, 2010, the IRS assessed the taxes and penalties set forth in the Notice of Deficiency plus deficiency interest as provided by law, and on March 1, 2010, Salem fully satisfied the assessed liability. Salem now files this claim for refund seeking to recover the \$76,734,695.55 in taxes, penalties, and deficiency interest it paid. This claim sets forth a statement of the facts and the legal grounds for recovery. This claim is being filed pursuant to the letter agreement between BB&T Corporation ("BB&T") and the IRS dated August 12, 2009.

Statement of Facts

During the 2002 Tax Year, Branch was a partially owned subsidiary of Branch Banking and Trust Company ("Bank"), a commercial bank chartered by the State of North Carolina. Bank was a wholly owned subsidiary of BB&T, a holding company organized under the laws of the State of North Carolina that is engaged in a broad range of financial services through its subsidiaries.

Prior to the Barclays Financing, Branch was a wholly owned subsidiary of Bank and was part of the affiliated group for which BB&T, as parent, filed consolidated federal income tax returns. On August 1, 2002, Branch issued preferred shares representing 22 percent of its voting power to Asteras Holding LLC ("Asteras"), a company unrelated to BB&T, in exchange for \$65 million, and Branch thereby ceased to be a member of the BB&T consolidated group for federal income tax purposes. Accordingly, Branch filed a separate U.S. federal income tax return for the 2002 Tax Year.

In 2002, Bank entered into the Barclays Financing through Branch in order to obtain low-cost, diversified funding. Specifically, on August 1, 2002, Branch borrowed \$1.5 billion from Barclays at an interest rate approximately 290 basis points below Branch's normal cost of funds. Barclays, a corporation organized under the laws of England and Wales, was able to offer funding to Branch at such favorable rates because the Barclays Financing was structured in a manner that allowed Barclays to obtain certain U.K. tax benefits.

An abbreviated summary of the facts of the Barclays Financing follows:

- (1) Bank contributed income-generating assets to Branch.
- (2) Branch contributed the majority of these income-generating assets to Branch Finance LLC ("DelCo"), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes.
- (3) Branch contributed additional income-generating assets and part of its interests in DelCo to Branch Funding Trust ("Trust"), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes.

The Trust was subject to U.K. income tax after the Barclays Financing was implemented. Branch Management LLC (“Manager”), a limited liability company that elected to be treated as a corporation for U.S. federal income tax purposes, was appointed manager of the Trust. Manager was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns. Delaware Trust Capital Management, Inc. (“U.S. Trustee”) was initially appointed the trustee of the Trust.

- (4) Branch contributed part of its interest in the Trust to Branch Holdings LLC (“NewCo”), a newly formed entity that initially elected to be treated as a corporation for U.S. federal income tax purposes. NewCo was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns.
- (5) After Branch’s contribution of part of its interest in the Trust to NewCo, the Trust was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and NewCo as its partners.
- (6) Upon Trust becoming a partnership, DelCo was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and the Trust as its partners.
- (7) Barclays contributed approximately \$1.5 billion to the Trust in exchange for various classes of interests in the Trust. Branch and Barclays also executed a series of agreements with respect to certain interests in the Trust (including a Repurchase Agreement and a Zero Coupon Swap) that were collectively treated as a secured loan from Barclays to Branch for U.S. federal income tax purposes.
- (8) Branch and DelCo created Branch Administrators Limited (“U.K. Trustee”), a newly formed entity that elected to be treated as a partnership for U.S. federal income tax purposes. The U.K. Trustee replaced the U.S. Trustee as trustee of the Trust.
- (9) Branch lent approximately \$1.5 billion to affiliates of BB&T for use in their ordinary course of business.
- (10) On January 16, 2005, NewCo elected to be treated as a disregarded entity for U.S. federal income tax purposes. As a result, Trust, DelCo, and the U.K. Trustee became disregarded entities wholly owned by Branch for U.S. federal income tax purposes.
- (11) The Barclays Financing was terminated on April 4, 2007.

During the term of the Barclays Financing, the Trust earned income and paid U.K. tax on that income. The Trust then distributed the after-tax proceeds to a blocked account owned by Barclays, and Barclays was obligated to immediately recontribute such distributions to the Trust.

These distributions and recontributions were disregarded for U.S. federal income tax purposes. On its consolidated U.S. federal income tax return, Branch reported its distributive share and NewCo's distributive share of the Trust's income, and Branch also credited the U.K. taxes paid by the Trust against its U.S. taxes.

The transaction structure made it possible for Barclays to obtain certain U.K. tax benefits for which Barclays compensated Branch through a reduction in the interest costs of the secured loan. Branch treated any LIBOR-based payments that it made to Barclays with respect to the secured loan as interest expense for both financial accounting purposes and U.S. federal income tax purposes (deducting it as such under section 163). Branch treated amounts owed by Barclays pursuant to the terms of the secured loan as reducing overall interest expense for U.S. federal income tax purposes. To the extent the amounts owed by Barclays exceeded the LIBOR-based payments Branch owed to Barclays, Branch reported such net income as interest income for U.S. tax purposes.

In addition, Branch deducted the professional fees incurred in connection with the transaction as ordinary and necessary business expenses under section 162.

Legal Grounds for Recovery

I. Disallowance of Foreign Tax Credits

The U.K. taxes paid by Branch in connection with the Barclays Financing were creditable foreign income taxes for U.S. federal income tax purposes under sections 901 and 904 and the regulations thereunder. Further, based on the relevant facts and circumstances, the foreign tax credits claimed by Branch with respect to the Barclays Financing should be respected under the economic substance, substance-over-form, step transaction and any similar doctrines, to the extent such doctrines are applicable. *See, e.g., Compaq Computer Corp. v. Comm'r*, 277 F.3d 778 (5th Cir. 2001); *IES Indus., Inc. v. United States*, 253 F.3d 350 (8th Cir. 2001); Notice 98-5, 1998-1 C.B. 334 (Jan. 20, 1998).

In addition, section 269 is inapplicable to the foreign tax credits claimed by Branch, and the foreign tax credits may not be disallowed on the grounds that Asteras' acquisition of preferred shares in Branch did not result in the deconsolidation of Branch from BB&T's consolidated group for U.S. federal income tax purposes.

To the extent that the foreign tax credits claimed by Branch are denied, Branch should be entitled to a deduction for the U.K. taxes paid by the Trust under section 162 or section 164. Further, to the extent that credits or deductions for the U.K. taxes paid by the Trust are denied, then the corresponding income should be eliminated for U.S. federal income tax purposes.

II. Adjustments for Fee Income and Interest Expense

As stated above, Branch owed Barclays a monthly interest amount pursuant to the terms of the secured loan based on a floating rate tied to 1-month LIBOR less a fixed amount due from Barclays. Whenever Branch's floating rate interest obligation was less than the fixed amount,

Branch would receive a net payment from Barclays equal to the difference between the two amounts. Based on the 1-month LIBOR rates in effect during 2002, Branch's floating rate interest obligation (\$11,040,356) was less than the fixed amount due from Barclays (\$17,228,407). Barclays, therefore, paid Branch the difference (\$6,188,051). Branch reported the net amount received from Barclays in its taxable income for the 2002 Tax Year on an accrual basis.¹

By making two separate adjustments to Branch's taxable income, the Notice of Deficiency effectively disallowed an interest expense deduction for Branch's \$11,040,356 floating rate interest expense without factoring in a reduction for the fixed amount due from Barclays. First, the Notice of Deficiency increased taxable income by \$17,228,407 and incorrectly characterized this amount as "fee income" that was "not properly reported." This \$17,228,407 represents the fixed amount by which Branch's floating rate interest obligation was reduced under the terms of the secured loan. The total fixed amount due from Barclays is merely part of the formula by which Branch's total interest obligation was calculated and reported on its tax return. Second, the Notice of Deficiency decreased taxable income by \$6,188,051 for the payments Branch actually received from Barclays.

Based on the relevant facts and circumstances, Branch should be entitled to exclude the entire net adjustment of \$11,040,356 from income because Branch's interest obligation represents interest on genuine indebtedness and is deductible under section 163. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

Alternatively, to the extent that a deduction for the \$11,040,356 in interest expense is denied or the foreign tax credits are denied, \$17,228,407 should be excluded from income.

In addition, the Notice of Deficiency's adjustments for "fee income" and interest expense were based on a cash method of reporting. Branch, however, was an accrual method taxpayer. If the Notice of Deficiency's adjustments are deemed to be correct, Branch is nevertheless entitled to a refund to the extent that the adjustments exceed the actual income and expenses accrued and reported by Branch as a result of the Barclays Financing.

III. Disallowance of Deductions for Transaction Costs

Based on the relevant facts and circumstances, the deductions taken by Branch for transaction costs paid with respect to the Barclays Financing cannot be disregarded because the financing transaction is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent such doctrines are applicable.

¹ The amounts of \$11,040,356 for Branch's floating rate interest obligation, \$17,228,407 for the fixed amount owed by Barclays, and \$6,188,051 for the net amount of income reported by Branch are from the Notice of Deficiency, which does not reflect the accrued amounts in Branch's tax reporting.

IV. Reclassification of Foreign Source Income

Foreign source income in the amount of \$166,008,392 cannot be reclassified as domestic source income because Branch properly reported this income as foreign source income in accordance with Article 23 of the Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, U.S.-U.K., Dec. 31, 1975. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

V. Penalties

Branch is not subject to a section 6662(a) penalty for substantial understatement of income tax or for negligence or disregard of rules or regulations because there is substantial authority to sustain Branch's position, including relevant case law and the plain meaning of the applicable Code provisions and regulations thereunder, and Branch can otherwise demonstrate reasonable cause under section 6664.

Claim for Refund

Branch, therefore, seeks a refund in the amount of \$42,814,706 for taxes paid, \$8,562,941.20 for penalties paid, and \$25,357,048.35 for deficiency interest paid plus statutory interest on the amount to be refunded, or such greater amount as is legally refundable. In addition, pursuant to the provisions of Revenue Procedure 2000-26, 2000-1 C.B. 1257, Branch requests that the IRS apply the net interest rate of zero pursuant to section 6621(d) to the tax years ending December 31, 2002, December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and June 15, 2007, as well as all other tax years that are open for such purposes on March 11, 2010.

Request for Expedited Denial Pursuant to IR 1600

As explained above, this refund claim for the 2002 Tax Year is based solely on contested income tax issues considered in previously examined returns. Therefore, pursuant to IR 1600 (Apr. 26, 1976) and the agreement between BB&T and the IRS, Branch now requests that the IRS immediately reject this claim for refund and promptly issue a notice of claim disallowance.

Exhibit B

Form **1120X**
 (Rev. January 2008)
 Department of the Treasury
 Internal Revenue Service

**Amended U.S. Corporation
 Income Tax Return**

OMB No. 1545-0132
For tax year ending
 2003/12
 (Enter month and year.)

Please Type or Print	Name	SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC	Employer identification number	51-0349647
	Number, street, and room or suite no. (If a P.O. box, see instructions.)			
	P.O. BOX 483			
	City or town, state, and ZIP code	WINSTON-SALEM, NC 27102	Telephone number (optional)	

Enter name and address used on original return (If same as above, write "Same.")
 BRANCH INVESTMENTS LLC 1007 ORANGE ST, STE 1407 WILMINGTON, DE 19801 EIN: 51-0349647
 Internal Revenue Service Center where original return was filed OGDEN, UT

Fill in applicable items and use Part II on the back to explain any changes

Part I	Income and Deductions (see instructions)	(a) As originally reported or as previously adjusted	(b) Net change— increase or (decrease)— explain in Part II	(c) Correct amount
1	Total income (Form 1120 or 1120-A, line 11)	500,700,291	-22,107,107	478,593,184
2	Total deductions (total of lines 27 and 29c, Form 1120, or lines 23 and 25c, Form 1120-A)	56,625,940	1,632,154	58,258,094
3	Taxable income. Subtract line 2 from line 1	444,074,351	-23,739,261	420,335,090
4	Tax (Form 1120, line 31, or Form 1120-A, line 27)	154,125,441	-105,576,404	48,549,037

Payments and Credits (see instructions)

5 a	Overpayment in prior year allowed as a credit	13,396,017		13,396,017
b	Estimated tax payments	43,500,000		43,500,000
c	Refund applied for on Form 4466			
d	Subtract line 5c from the sum of lines 5a and 5b	56,896,017	0	56,896,017
e	Tax deposited with Form 7004			
f	Credit from Form 2439			
g	Credit for federal tax on fuels and other refundable credits			
6	Tax deposited or paid with (or after) the filing of the original return			105,576,404
7	Add lines 5d through 6, column (c)			162,472,421
8	Overpayment, if any, as shown on original return or as later adjusted			8,346,980
9	Subtract line 8 from line 7			154,125,441

Tax Due or Overpayment (see instructions)

10	Tax due. Subtract line 9 from line 4, column (c). If paying by check, make it payable to the "United States Treasury"			0
11	Overpayment. Subtract line 4, column (c), from line 9			105,576,404
12	Enter the amount of line 11 you want: Credited to 20 <u> </u> estimated tax Refunded			105,576,404

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here	Signature of officer	Date	Title	
	<i>Julie A. Jones</i>	3-15-2010	Vice President, Treasurer	
Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Phone no.	

Form **843**
 (Rev. February 2009)
 Department of the Treasury
 Internal Revenue Service

Claim for Refund and Request for Abatement

OMB No. 1545-0024

▶ See separate instructions.

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes and an employer's claim for FICA tax, RRTA tax, or income tax withholding), shown on line 3,
- (b) an abatement of FUTA tax or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

Do not use Form 843 if your claim or request involves:

- (a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Name(s) SALEM FINANCIAL INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC	Your social security number
Address (number, street, and room or suite no.) P.O. BOX 483	Spouse's social security number
City or town, state, and ZIP code WINSTON-SALEM, NC 27102	Employer identification number (EIN) 51 0349647
Name and address shown on return if different from above BRANCH INVESTMENTS LLC, 1007 ORANGE ST, STE 1407, WILMINGTON, DE 19801	Daytime telephone number ()

1 Period. Prepare a separate Form 843 for each tax period From 01 / 01 / 2003 to 12 / 31 / 2003	2 Amount to be refunded or abated \$ 21,115,280.80
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3 Type of tax. Indicate the type of tax to be refunded or abated or to which the interest, penalty, or addition to tax is related.

Employment
 Estate
 Gift
 Excise
 Income

4 Type of penalty. If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: **6662(a)**

5a Interest, penalties, and additions to tax. Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.)

Interest was assessed as a result of IRS errors or delays.
 A penalty or addition to tax was the result of erroneous written advice from the IRS.
 Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.

b Date(s) of payment(s) ▶ **03/01/2010**

6 Original return. Indicate the type of return filed to which the tax, interest, penalty, or addition to tax relates.

706 709 940 941 943 945
 990-PF 1040 1120 4720 Other (specify) ▶

7 Explanation. Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.

See attached

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Julie A. Jones Vice President, Treasurer *3-15-2010*
 Signature (Title, if applicable. Claims by corporations must be signed by an officer.) Date

Signature (spouse, if joint return) Date

Paid Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code ▶	EIN	Phone no. ()	

Salem Financial, Inc. as Successor in Interest to Branch Investments LLC
EIN: 51-0349647

Attachment to Form 1120X and Form 843

This claim is being filed to correct the employer identification number (EIN) listed on Form 1120X and Form 843 from the claim originally filed on March 11, 2010 under EIN: 26-0229198 and should supersede that claim.

**SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO
BRANCH INVESTMENTS LLC**

Claim for Refund

Tax Year: 2003

Tax: \$105,576,404

Penalty: \$21,115,280.80

Interest: \$54,337,193.44

Total Amount of Claim for Refund: \$181,028,878.24 plus interest, or such greater amount as is legally refundable.

Procedural History

On September 10, 2004, Branch Investments LLC and Subsidiaries (“Branch”) timely filed its consolidated U.S. federal income tax return for the taxable year ending December 31, 2003 (the “2003 Tax Year”). After examining Branch’s return for the 2003 Tax Year, the Internal Revenue Service (“IRS”) proposed various adjustments, described below, related to a financing provided by Barclays Bank PLC (“Barclays”) (referred to as the “Barclays Financing”). (*See* Exhibit A (Forms 5701 for issues IE-001; IE-002; IE-003; IE-004; IE-005; IE-006 (Aug. 4, 2009)).)

On February 28, 2009, Branch merged with Salem Financial, Inc. This merger caused Branch to cease to exist. As a result, Salem Financial, Inc. (“Salem”) is the appropriate party to file this administrative claim for refund as the successor in interest to Branch.

On February 12, 2010, the IRS issued a Statutory Notice of Deficiency for the 2003 Tax Year to Branch Investments LLC and Subsidiaries c/o Salem Financial, Inc. (Exhibit B.) The Notice of Deficiency made the following adjustments related to the Barclays Financing:

- (1) disallowed foreign tax credits claimed under section 901 in the amount of \$97,267,663;
- (2) increased taxable income by \$48,046,716 for fee income purportedly received by Branch and reduced taxable income by \$25,939,609 for interest income received by Branch, for a net increase in taxable income of \$22,107,107;
- (3) disallowed deductions for transaction costs claimed under section 162 in the amount of \$1,632,154;
- (4) reclassified \$468,617,014 of foreign source income as domestic source income; and
- (5) imposed a penalty under section 6662 in the amount of \$21,115,280.80.

On February 16, 2010, Salem executed Form 4089 in which it consented to the immediate assessment of tax in the amount of \$105,576,404 and to the imposition of penalties in the amount of \$21,115,280.80 for the 2003 Tax Year. (Exhibit C.) Pursuant to the terms of the Form 4089, Salem reserved the right to file a claim for refund.

On March 1, 2010, the IRS assessed the taxes and penalties set forth in the Notice of Deficiency plus deficiency interest as provided by law, and on March 1, 2010, Salem fully satisfied the assessed liability. Salem now files this claim for refund seeking to recover the \$181,028,878.24 in taxes, penalties, and deficiency interest it paid. This claim sets forth a statement of the facts and the legal grounds for recovery. This claim is being filed pursuant to the letter agreement between BB&T Corporation (“BB&T”) and the IRS dated August 12, 2009.

Statement of Facts

During the 2003 Tax Year, Branch was a partially owned subsidiary of Branch Banking and Trust Company (“Bank”), a commercial bank chartered by the State of North Carolina. Bank was a wholly owned subsidiary of BB&T, a holding company organized under the laws of the State of North Carolina that is engaged in a broad range of financial services through its subsidiaries.

Prior to the Barclays Financing, Branch was a wholly owned subsidiary of Bank and was part of the affiliated group for which BB&T, as parent, filed consolidated federal income tax returns. On August 1, 2002, Branch issued preferred shares representing 22 percent of its voting power to Asteras Holding LLC (“Asteras”), a company unrelated to BB&T, in exchange for \$65 million, and Branch thereby ceased to be a member of the BB&T consolidated group for federal income tax purposes. Accordingly, Branch filed a separate U.S. federal income tax return for the 2003 Tax Year.

In 2002, Bank entered into the Barclays Financing through Branch in order to obtain low-cost, diversified funding. Specifically, on August 1, 2002, Branch borrowed \$1.5 billion from Barclays at an interest rate approximately 290 basis points below Branch’s normal cost of funds. Barclays, a corporation organized under the laws of England and Wales, was able to offer funding to Branch at such favorable rates because the Barclays Financing was structured in a manner that allowed Barclays to obtain certain U.K. tax benefits.

An abbreviated summary of the facts of the Barclays Financing follows:

- (1) Bank contributed income-generating assets to Branch.
- (2) Branch contributed the majority of these income-generating assets to Branch Finance LLC (“DelCo”), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes.
- (3) Branch contributed additional income-generating assets and part of its interests in DelCo to Branch Funding Trust (“Trust”), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes.

The Trust was subject to U.K. income tax after the Barclays Financing was implemented. Branch Management LLC (“Manager”), a limited liability company that elected to be treated as a corporation for U.S. federal income tax purposes, was appointed manager of the Trust. Manager was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns. Delaware Trust Capital Management, Inc. (“U.S. Trustee”) was initially appointed the trustee of the Trust.

- (4) Branch contributed part of its interest in the Trust to Branch Holdings LLC (“NewCo”), a newly formed entity that initially elected to be treated as a corporation for U.S. federal income tax purposes. NewCo was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns.
- (5) After Branch’s contribution of part of its interest in the Trust to NewCo, the Trust was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and NewCo as its partners.
- (6) Upon Trust becoming a partnership, DelCo was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and the Trust as its partners.
- (7) Barclays contributed approximately \$1.5 billion to the Trust in exchange for various classes of interests in the Trust. Branch and Barclays also executed a series of agreements with respect to certain interests in the Trust (including a Repurchase Agreement and a Zero Coupon Swap) that were collectively treated as a secured loan from Barclays to Branch for U.S. federal income tax purposes.
- (8) Branch and DelCo created Branch Administrators Limited (“U.K. Trustee”), a newly formed entity that elected to be treated as a partnership for U.S. federal income tax purposes. The U.K. Trustee replaced the U.S. Trustee as trustee of the Trust.
- (9) Branch lent approximately \$1.5 billion to affiliates of BB&T for use in their ordinary course of business.
- (10) On January 16, 2005, NewCo elected to be treated as a disregarded entity for U.S. federal income tax purposes. As a result, Trust, DelCo, and the U.K. Trustee became disregarded entities wholly owned by Branch for U.S. federal income tax purposes.
- (11) The Barclays Financing was terminated on April 4, 2007.

During the term of the Barclays Financing, the Trust earned income and paid U.K. tax on that income. The Trust then distributed the after-tax proceeds to a blocked account owned by Barclays, and Barclays was obligated to immediately recontribute such distributions to the Trust.

These distributions and recontributions were disregarded for U.S. federal income tax purposes. On its consolidated U.S. federal income tax return, Branch reported its distributive share and NewCo's distributive share of the Trust's income, and Branch also credited the U.K. taxes paid by the Trust against its U.S. taxes.

The transaction structure made it possible for Barclays to obtain certain U.K. tax benefits for which Barclays compensated Branch through a reduction in the interest costs of the secured loan. Branch treated any LIBOR-based payments that it made to Barclays with respect to the secured loan as interest expense for both financial accounting purposes and U.S. federal income tax purposes (deducting it as such under section 163). Branch treated amounts owed by Barclays pursuant to the terms of the secured loan as reducing overall interest expense for U.S. federal income tax purposes. To the extent the amounts owed by Barclays exceeded the LIBOR-based payments Branch owed to Barclays, Branch reported such net income as interest income for U.S. tax purposes.

In addition, Branch deducted the professional fees incurred in connection with the transaction as ordinary and necessary business expenses under section 162.

Legal Grounds for Recovery

I. Disallowance of Foreign Tax Credits

The U.K. taxes paid by Branch in connection with the Barclays Financing were creditable foreign income taxes for U.S. federal income tax purposes under sections 901 and 904 and the regulations thereunder. Further, based on the relevant facts and circumstances, the foreign tax credits claimed by Branch with respect to the Barclays Financing should be respected under the economic substance, substance-over-form, step transaction and any similar doctrines, to the extent such doctrines are applicable. *See, e.g., Compaq Computer Corp. v. Comm'r*, 277 F.3d 778 (5th Cir. 2001); *IES Indus., Inc. v. United States*, 253 F.3d 350 (8th Cir. 2001); Notice 98-5, 1998-1 C.B. 334 (Jan. 20, 1998).

In addition, section 269 is inapplicable to the foreign tax credits claimed by Branch, and the foreign tax credits may not be disallowed on the grounds that Asteras' acquisition of preferred shares in Branch did not result in the deconsolidation of Branch from BB&T's consolidated group for U.S. federal income tax purposes.

To the extent that the foreign tax credits claimed by Branch are denied, Branch should be entitled to a deduction for the U.K. taxes paid by the Trust under section 162 or section 164. Further, to the extent that credits or deductions for the U.K. taxes paid by the Trust are denied, then the corresponding income should be eliminated for U.S. federal income tax purposes.

II. Adjustments for Fee Income and Interest Expense

As stated above, Branch owed Barclays a monthly interest amount pursuant to the terms of the secured loan based on a floating rate tied to 1-month LIBOR less a fixed amount due from Barclays. Whenever Branch's floating rate interest obligation was less than the fixed amount,

Branch would receive a net payment from Barclays equal to the difference between the two amounts. Based on the 1-month LIBOR rates in effect during 2003, Branch's floating rate interest obligation (\$22,107,107) was less than the fixed amount due from Barclays (\$48,046,716). Barclays, therefore, paid Branch the difference (\$25,939,609). Branch reported the net amount received from Barclays in its taxable income for the 2003 Tax Year on an accrual basis.¹

By making two separate adjustments to Branch's taxable income, the Notice of Deficiency effectively disallowed an interest expense deduction for Branch's \$22,107,107 floating rate interest expense without factoring in a reduction for the fixed amount due from Barclays. First, the Notice of Deficiency increased taxable income by \$48,046,716 and incorrectly characterized this amount as "fee income" that was "not properly reported." This \$48,046,716 represents the fixed amount by which Branch's floating rate interest obligation was reduced under the terms of the secured loan. The total fixed amount due from Barclays is merely part of the formula by which Branch's total interest obligation was calculated and reported on its tax return. Second, the Notice of Deficiency decreased taxable income by \$25,939,609 for the payments Branch actually received from Barclays.

Based on the relevant facts and circumstances, Branch should be entitled to exclude the entire net adjustment of \$22,107,107 from income because Branch's interest obligation represents interest on genuine indebtedness and is deductible under section 163. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

Alternatively, to the extent that a deduction for the \$22,107,107 in interest expense is denied or the foreign tax credits are denied, \$48,046,716 should be excluded from income.

In addition, the Notice of Deficiency's adjustments for "fee income" and interest expense were based on a cash method of reporting. Branch, however, was an accrual method taxpayer. If the Notice of Deficiency's adjustments are deemed to be correct, Branch is nevertheless entitled to a refund to the extent that the adjustments exceed the actual income and expenses accrued and reported by Branch as a result of the Barclays Financing.

III. Disallowance of Deductions for Transaction Costs

Based on the relevant facts and circumstances, the deductions taken by Branch for transaction costs paid with respect to the Barclays Financing cannot be disregarded because the financing transaction is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent such doctrines are applicable.

¹ The amounts of \$22,107,107 for Branch's floating rate interest obligation, \$48,046,716 for the fixed amount owed by Barclays, and \$25,939,609 for the net amount of income reported by Branch are from the Notice of Deficiency, which does not reflect the accrued amounts in Branch's tax reporting.

IV. Reclassification of Foreign Source Income

Foreign source income in the amount of \$468,617,014 cannot be reclassified as domestic source income because Branch properly reported this income as foreign source income in accordance with Article 23 of the Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, U.S.-U.K., Dec. 31, 1975. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

V. Penalties

Branch is not subject to a section 6662(a) penalty for substantial understatement of income tax or for negligence or disregard of rules or regulations because there is substantial authority to sustain Branch's position, including relevant case law and the plain meaning of the applicable Code provisions and regulations thereunder, and Branch can otherwise demonstrate reasonable cause under section 6664.

Claim for Refund

Branch, therefore, seeks a refund in the amount of \$105,576,404 for taxes paid, \$21,115,280.80 for penalties paid, and \$54,337,193.44 for deficiency interest paid plus statutory interest on the amount to be refunded, or such greater amount as is legally refundable. In addition, pursuant to the provisions of Revenue Procedure 2000-26, 2000-1 C.B. 1257, Branch requests that the IRS apply the net interest rate of zero pursuant to section 6621(d) to the tax years ending December 31, 2002, December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and June 15, 2007, as well as all other tax years that are open for such purposes on March 11, 2010.

Request for Expedited Denial Pursuant to IR 1600

As explained above, this refund claim for the 2003 Tax Year is based solely on contested income tax issues considered in previously examined returns. Therefore, pursuant to IR 1600 (Apr. 26, 1976) and the agreement between BB&T and the IRS, Branch now requests that the IRS immediately reject this claim for refund and promptly issue a notice of claim disallowance.

Exhibit C

Form **1120X**
 (Rev. January 2008)
 Department of the Treasury
 Internal Revenue Service

**Amended U.S. Corporation
 Income Tax Return**

OMB No. 1545-0132
For tax year ending
 2004/12
 (Enter month and year.)

Please Type or Print	Name SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC	Employer identification number 51-0349647
	Number, street, and room or suite no. (If a P.O. box, see instructions.) P.O. BOX 483	
	City or town, state, and ZIP code WINSTON-SALEM, NC 27102	Telephone number (optional)

Enter name and address used on original return (If same as above, write "Same.")
BRANCH INVESTMENTS LLC 1007 ORANGE ST, STE 1407 WILMINGTON, DE 19801 EIN: 51-0349647
 Internal Revenue Service Center where original return was filed **OGDEN, UT**

Fill in applicable items and use Part II on the back to explain any changes

Part I	Income and Deductions (see instructions)	(a) As originally reported or as previously adjusted	(b) Net change— increase or (decrease)— explain in Part II	(c) Correct amount
1	Total income (Form 1120 or 1120-A, line 11)	505,188,152	-24,475,506	480,712,646
2	Total deductions (total of lines 27 and 29c, Form 1120, or lines 23 and 25c, Form 1120-A)	59,185,880	1,622,052	60,807,932
3	Taxable income. Subtract line 2 from line 1	446,002,272	-26,097,558	419,904,714
4	Tax (Form 1120, line 31, or Form 1120-A, line 27)	156,100,795	-117,570,184	38,530,611
Payments and Credits (see instructions)				
5 a	Overpayment in prior year allowed as a credit	8,346,980		8,346,980
b	Estimated tax payments	48,500,000		48,500,000
c	Refund applied for on Form 4466			
d	Subtract line 5c from the sum of lines 5a and 5b	56,846,980	0	56,846,980
e	Tax deposited with Form 7004			
f	Credit from Form 2439			
g	Credit for federal tax on fuels and other refundable credits			
6	Tax deposited or paid with (or after) the filing of the original return			117,745,044
7	Add lines 5d through 6, column (c)			174,592,024
8	Overpayment, if any, as shown on original return or as later adjusted			18,491,229
9	Subtract line 8 from line 7			156,100,795

Tax Due or Overpayment (see instructions)				
10	Tax due. Subtract line 9 from line 4, column (c). If paying by check, make it payable to the "United States Treasury"			0
11	Overpayment. Subtract line 4, column (c), from line 9			117,570,184
12	Enter the amount of line 11 you want: Credited to 20 <u> </u> estimated tax Refunded			117,570,184

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here	Signature of officer <i>Julie L. Jones</i>	Date <i>3-15-10</i>	Title <i>Vice President & Treasurer</i>
	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>
Paid Preparer's Use Only	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Preparer's SSN or PTIN
		Phone no.	

Form **843**
 (Rev. February 2009)
 Department of the Treasury
 Internal Revenue Service

Claim for Refund and Request for Abatement

OMB No. 1545-0024

▶ See separate instructions.

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes and an employer's claim for FICA tax, RRTA tax, or income tax withholding), shown on line 3,
- (b) an abatement of FUTA tax or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

Do not use Form 843 if your claim or request involves:

- (a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Name(s) SALEM FINANCIAL INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC		Your social security number
Address (number, street, and room or suite no.) P.O. BOX 483		Spouse's social security number
City or town, state, and ZIP code WINSTON-SALEM, NC 27102		Employer identification number (EIN) 51 0349647
Name and address shown on return if different from above BRANCH INVESTMENTS LLC, 1007 ORANGE ST, STE 1407, WILMINGTON, DE 19801		Daytime telephone number ()
1 Period. Prepare a separate Form 843 for each tax period From 01 / 01 / 2004 to 12 / 31 / 2004	2 Amount to be refunded or abated \$ 23,514,036.80	
3 Type of tax. Indicate the type of tax to be refunded or abated or to which the interest, penalty, or addition to tax is related. <input type="checkbox"/> Employment <input type="checkbox"/> Estate <input type="checkbox"/> Gift <input type="checkbox"/> Excise <input checked="" type="checkbox"/> Income		
4 Type of penalty. If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: 6662(a)		
5a Interest, penalties, and additions to tax. Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.) <input type="checkbox"/> Interest was assessed as a result of IRS errors or delays. <input type="checkbox"/> A penalty or addition to tax was the result of erroneous written advice from the IRS. <input checked="" type="checkbox"/> Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.		
b Date(s) of payment(s) ▶ 03/01/2010		
6 Original return. Indicate the type of return filed to which the tax, interest, penalty, or addition to tax relates. <input type="checkbox"/> 706 <input type="checkbox"/> 709 <input type="checkbox"/> 940 <input type="checkbox"/> 941 <input type="checkbox"/> 943 <input type="checkbox"/> 945 <input type="checkbox"/> 990-PF <input type="checkbox"/> 1040 <input checked="" type="checkbox"/> 1120 <input type="checkbox"/> 4720 <input type="checkbox"/> Other (specify) ▶		
7 Explanation. Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.		

See attached

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Julie K. Jones Vice President & Treasurer 3-15-10
 Signature (Title, if applicable. Claims by corporations must be signed by an officer.) Date

Signature (spouse, if joint return) Date

Paid Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code ▶	EIN	Phone no. ()	

Salem Financial, Inc. as Successor in Interest to Branch Investments LLC
EIN: 51-0349647

Attachment to Form 1120X and Form 843

This claim is being filed to correct the employer identification number (EIN) listed on Form 1120X and Form 843 from the claim originally filed on March 11, 2010 under EIN: 26-0229198 and should supersede that claim.

**SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO
BRANCH INVESTMENTS LLC**

Claim for Refund

Tax Year: 2004

Tax: \$117,570,184

Penalty: \$23,514,036.80

Total Amount of Claim for Refund: \$141,084,220.80 plus deficiency interest assessed on this amount, together with interest on the amount to be refunded, or such greater amount as is legally refundable.

Procedural History

On September 14, 2005, Branch Investments LLC and Subsidiaries (“Branch”) timely filed its consolidated U.S. federal income tax return for the taxable year ending December 31, 2004 (the “2004 Tax Year”). After examining Branch’s return for the 2004 Tax Year, the Internal Revenue Service (“IRS”) proposed various adjustments, described below, related to a financing provided by Barclays Bank PLC (“Barclays”) (referred to as the “Barclays Financing”). (See Exhibit A (Forms 5701 for issues IE-001; IE-002; IE-003; IE-004; IE-005; IE-006 (Aug. 4, 2009)).)

On February 28, 2009, Branch merged with Salem Financial, Inc. This merger caused Branch to cease to exist. As a result, Salem Financial, Inc. (“Salem”) is the appropriate party to file this administrative claim for refund as the successor in interest to Branch.

On February 12, 2010, the IRS issued a Statutory Notice of Deficiency for the 2004 Tax Year to Branch Investments LLC and Subsidiaries c/o Salem Financial, Inc. (Exhibit B.) The Notice of Deficiency made the following adjustments related to the Barclays Financing:

- (1) disallowed foreign tax credits claimed under section 901 in the amount of \$108,436,039;
- (2) increased taxable income by \$50,891,300 for fee income purportedly received by Branch and reduced taxable income by \$26,415,794 for interest income received by Branch, for a net increase in taxable income of \$24,475,506;
- (3) disallowed deductions for transaction costs claimed under section 162 in the amount of \$1,622,052;
- (4) reclassified \$479,843,873 of foreign source income as domestic source income; and
- (5) imposed a penalty under section 6662 in the amount of \$23,514,036.80.

On February 16, 2010, Salem executed Form 4089 in which it consented to the immediate assessment of tax in the amount of \$117,745,044 and to the imposition of penalties in the amount of \$23,514,036.80 for the 2004 Tax Year. (Exhibit C.) Pursuant to the terms of the Form 4089, Salem reserved the right to file a claim for refund.

On March 1, 2010, the IRS assessed the taxes and penalties set forth in the Notice of Deficiency plus deficiency interest as provided by law, and on March 1, 2010, Salem fully satisfied the assessed liability. Salem now files this claim for refund seeking to recover \$141,084,220.80 for taxes and penalties paid plus the deficiency interest it paid on this amount. This claim sets forth a statement of the facts and the legal grounds for recovery. This claim is being filed pursuant to the letter agreement between BB&T Corporation ("BB&T") and the IRS dated August 12, 2009.

Statement of Facts

During the 2004 Tax Year, Branch was a partially owned subsidiary of Branch Banking and Trust Company ("Bank"), a commercial bank chartered by the State of North Carolina. Bank was a wholly owned subsidiary of BB&T, a holding company organized under the laws of the State of North Carolina that is engaged in a broad range of financial services through its subsidiaries.

Prior to the Barclays Financing, Branch was a wholly owned subsidiary of Bank and was part of the affiliated group for which BB&T, as parent, filed consolidated federal income tax returns. On August 1, 2002, Branch issued preferred shares representing 22 percent of its voting power to Asteras Holding LLC ("Asteras"), a company unrelated to BB&T, in exchange for \$65 million, and Branch thereby ceased to be a member of the BB&T consolidated group for federal income tax purposes. Accordingly, Branch filed a separate U.S. federal income tax return for the 2004 Tax Year.

In 2002, Bank entered into the Barclays Financing through Branch in order to obtain low-cost, diversified funding. Specifically, on August 1, 2002, Branch borrowed \$1.5 billion from Barclays at an interest rate approximately 290 basis points below Branch's normal cost of funds. Barclays, a corporation organized under the laws of England and Wales, was able to offer funding to Branch at such favorable rates because the Barclays Financing was structured in a manner that allowed Barclays to obtain certain U.K. tax benefits.

An abbreviated summary of the facts of the Barclays Financing follows:

- (1) Bank contributed income-generating assets to Branch.
- (2) Branch contributed the majority of these income-generating assets to Branch Finance LLC ("DelCo"), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes.
- (3) Branch contributed additional income-generating assets and part of its interests in DelCo to Branch Funding Trust ("Trust"), a newly formed entity that initially

elected to be treated as a disregarded entity for U.S. federal income tax purposes. The Trust was subject to U.K. income tax after the Barclays Financing was implemented. Branch Management LLC (“Manager”), a limited liability company that elected to be treated as a corporation for U.S. federal income tax purposes, was appointed manager of the Trust. Manager was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns. Delaware Trust Capital Management, Inc. (“U.S. Trustee”) was initially appointed the trustee of the Trust.

- (4) Branch contributed part of its interest in the Trust to Branch Holdings LLC (“NewCo”), a newly formed entity that initially elected to be treated as a corporation for U.S. federal income tax purposes. NewCo was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns.
- (5) After Branch’s contribution of part of its interest in the Trust to NewCo, the Trust was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and NewCo as its partners.
- (6) Upon Trust becoming a partnership, DelCo was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and the Trust as its partners.
- (7) Barclays contributed approximately \$1.5 billion to the Trust in exchange for various classes of interests in the Trust. Branch and Barclays also executed a series of agreements with respect to certain interests in the Trust (including a Repurchase Agreement and a Zero Coupon Swap) that were collectively treated as a secured loan from Barclays to Branch for U.S. federal income tax purposes.
- (8) Branch and DelCo created Branch Administrators Limited (“U.K. Trustee”), a newly formed entity that elected to be treated as a partnership for U.S. federal income tax purposes. The U.K. Trustee replaced the U.S. Trustee as trustee of the Trust.
- (9) Branch lent approximately \$1.5 billion to affiliates of BB&T for use in their ordinary course of business.
- (10) On January 16, 2005, NewCo elected to be treated as a disregarded entity for U.S. federal income tax purposes. As a result, Trust, DelCo, and the U.K. Trustee became disregarded entities wholly owned by Branch for U.S. federal income tax purposes.
- (11) The Barclays Financing was terminated on April 4, 2007.

During the term of the Barclays Financing, the Trust earned income and paid U.K. tax on that income. The Trust then distributed the after-tax proceeds to a blocked account owned by

Barclays, and Barclays was obligated to immediately recontribute such distributions to the Trust. These distributions and recontributions were disregarded for U.S. federal income tax purposes. On its consolidated U.S. federal income tax return, Branch reported its distributive share and NewCo's distributive share of the Trust's income, and Branch also credited the U.K. taxes paid by the Trust against its U.S. taxes.

The transaction structure made it possible for Barclays to obtain certain U.K. tax benefits for which Barclays compensated Branch through a reduction in the interest costs of the secured loan. Branch treated any LIBOR-based payments that it made to Barclays with respect to the secured loan as interest expense for both financial accounting purposes and U.S. federal income tax purposes (deducting it as such under section 163). Branch treated amounts owed by Barclays pursuant to the terms of the secured loan as reducing overall interest expense for U.S. federal income tax purposes. To the extent the amounts owed by Barclays exceeded the LIBOR-based payments Branch owed to Barclays, Branch reported such net income as interest income for U.S. tax purposes.

In addition, Branch deducted the professional fees incurred in connection with the transaction as ordinary and necessary business expenses under section 162.

Legal Grounds for Recovery

I. Disallowance of Foreign Tax Credits

The U.K. taxes paid by Branch in connection with the Barclays Financing were creditable foreign income taxes for U.S. federal income tax purposes under sections 901 and 904 and the regulations thereunder. Further, based on the relevant facts and circumstances, the foreign tax credits claimed by Branch with respect to the Barclays Financing should be respected under the economic substance, substance-over-form, step transaction and any similar doctrines, to the extent such doctrines are applicable. *See, e.g., Compaq Computer Corp. v. Comm'r*, 277 F.3d 778 (5th Cir. 2001); *IES Indus., Inc. v. United States*, 253 F.3d 350 (8th Cir. 2001); Notice 98-5, 1998-1 C.B. 334 (Jan. 20, 1998).

In addition, section 269 is inapplicable to the foreign tax credits claimed by Branch, and the foreign tax credits may not be disallowed on the grounds that Asteras' acquisition of preferred shares in Branch did not result in the deconsolidation of Branch from BB&T's consolidated group for U.S. federal income tax purposes.

To the extent that the foreign tax credits claimed by Branch are denied, Branch should be entitled to a deduction for the U.K. taxes paid by the Trust under section 162 or section 164. Further, to the extent that credits or deductions for the U.K. taxes paid by the Trust are denied, then the corresponding income should be eliminated for U.S. federal income tax purposes.

II. Adjustments for Fee Income and Interest Expense

As stated above, Branch owed Barclays a monthly interest amount pursuant to the terms of the secured loan based on a floating rate tied to 1-month LIBOR less a fixed amount due from

Barclays. Whenever Branch's floating rate interest obligation was less than the fixed amount, Branch would receive a net payment from Barclays equal to the difference between the two amounts. Based on the 1-month LIBOR rates in effect during 2004, Branch's floating rate interest obligation (\$24,475,506) was less than the fixed amount due from Barclays (\$50,891,300). Barclays, therefore, paid Branch the difference (\$26,415,794). Branch reported the net amount received from Barclays in its taxable income for the 2004 Tax Year on an accrual basis.¹

By making two separate adjustments to Branch's taxable income, the Notice of Deficiency effectively disallowed an interest expense deduction for Branch's \$24,475,506 floating rate interest expense without factoring in a reduction for the fixed amount due from Barclays. First, the Notice of Deficiency increased taxable income by \$50,891,300 and incorrectly characterized this amount as "fee income" that was "not properly reported." This \$50,891,300 represents the fixed amount by which Branch's floating rate interest obligation was reduced under the terms of the secured loan. The total fixed amount due from Barclays is merely part of the formula by which Branch's total interest obligation was calculated and reported on its tax return. Second, the Notice of Deficiency decreased taxable income by \$26,415,794 for the payments Branch actually received from Barclays.

Based on the relevant facts and circumstances, Branch should be entitled to exclude the entire net adjustment of \$24,475,506 from income because Branch's interest obligation represents interest on genuine indebtedness and is deductible under section 163. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

Alternatively, to the extent that a deduction for the \$24,475,506 in interest expense is denied or the foreign tax credits are denied, \$50,891,300 should be excluded from income.

In addition, the Notice of Deficiency's adjustments for "fee income" and interest expense were based on a cash method of reporting. Branch, however, was an accrual method taxpayer. If the Notice of Deficiency's adjustments are deemed to be correct, Branch is nevertheless entitled to a refund to the extent that the adjustments exceed the actual income and expenses accrued and reported by Branch as a result of the Barclays Financing.

III. Disallowance of Deductions for Transaction Costs

Based on the relevant facts and circumstances, the deductions taken by Branch for transaction costs paid with respect to the Barclays Financing cannot be disregarded because the financing transaction is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent such doctrines are applicable.

¹ The amounts of \$24,475,506 for Branch's floating rate interest obligation, \$50,891,300 for the fixed amount owed by Barclays, and \$26,415,794 for the net amount of income reported by Branch are from the Notice of Deficiency, which does not reflect the accrued amounts in Branch's tax reporting.

IV. Reclassification of Foreign Source Income

Foreign source income in the amount of \$479,843,873 cannot be reclassified as domestic source income because Branch properly reported this income as foreign source income in accordance with Article 24(2)(a) of the Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, U.S.-U.K., July 24, 2001. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

V. Penalties

Branch is not subject to a section 6662(a) penalty for substantial understatement of income tax or for negligence or disregard of rules or regulations because there is substantial authority to sustain Branch's position, including relevant case law and the plain meaning of the applicable Code provisions and regulations thereunder, and Branch can otherwise demonstrate reasonable cause under section 6664.

Claim for Refund

Branch, therefore, seeks a refund in the amount of \$117,570,184 for taxes paid, \$23,514,036.80 for penalties paid, plus deficiency interest paid on these amounts and statutory interest on the amount to be refunded, or such greater amount as is legally refundable. In addition, pursuant to the provisions of Revenue Procedure 2000-26, 2000-1 C.B. 1257, Branch requests that the IRS apply the net interest rate of zero pursuant to section 6621(d) to the tax years ending December 31, 2002, December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and June 15, 2007, as well as all other tax years that are open for such purposes on March 11, 2010.

Request for Expedited Denial Pursuant to IR 1600

As explained above, this refund claim for the 2004 Tax Year is based solely on contested income tax issues considered in previously examined returns. Therefore, pursuant to IR 1600 (Apr. 26, 1976) and the agreement between BB&T and the IRS, Branch now requests that the IRS immediately reject this claim for refund and promptly issue a notice of claim disallowance.

Exhibit D

Form **1120X**
 (Rev. January 2008)
 Department of the Treasury
 Internal Revenue Service

**Amended U.S. Corporation
 Income Tax Return**

OMB No. 1545-0132

For tax year ending

2005/12

(Enter month and year.)

Please Type or Print	Name	SALEM FINANCIAL, INC. AS SUCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC	Employer identification number	51-0349647
	Number, street, and room or suite no. (If a P.O. box, see instructions.)			
	P.O. BOX 483			
	City or town, state, and ZIP code	WINSTON-SALEM, NC 27102	Telephone number (optional)	

Enter name and address used on original return (If same as above, write "Same.")

BRANCH INVESTMENTS LLC 1007 ORANGE ST, STE 1407 WILMINGTON, DE 19801 EIN: 51-0349647

Internal Revenue Service Center where original return was filed OGDEN, UT

Fill in applicable items and use Part II on the back to explain any changes

Part I	Income and Deductions (see instructions)	(a) As originally reported or as previously adjusted	(b) Net change— increase or (decrease)— explain in Part II	(c) Correct amount
1	Total income (Form 1120 or 1120-A, line 11)	590,883,966	-51,539,868	539,344,098
2	Total deductions (total of lines 27 and 29c, Form 1120, or lines 23 and 25c, Form 1120-A)	47,288,424	1,621,847	48,910,271
3	Taxable income. Subtract line 2 from line 1	543,595,542	-53,161,715	490,433,827
4	Tax (Form 1120, line 31, or Form 1120-A, line 27)	190,258,440	-128,925,758	61,332,682

Payments and Credits (see instructions)

5 a	Overpayment in prior year allowed as a credit	18,491,229		18,491,229
b	Estimated tax payments	51,500,000		51,500,000
c	Refund applied for on Form 4466			
d	Subtract line 5c from the sum of lines 5a and 5b	69,991,229	0	69,991,229
e	Tax deposited with Form 7004			
f	Credit from Form 2439			
g	Credit for federal tax on fuels and other refundable credits			
	Estimated tax penalty	-108,215		-108,215
6	Tax deposited or paid with (or after) the filing of the original return			128,925,758
7	Add lines 5d through 6, column (c)			198,808,772
8	Overpayment, if any, as shown on original return or as later adjusted			8,550,332
9	Subtract line 8 from line 7			190,258,440

Tax Due or Overpayment (see instructions)

10	Tax due. Subtract line 9 from line 4, column (c). If paying by check, make it payable to the "United States Treasury"			0
11	Overpayment. Subtract line 4, column (c), from line 9			128,925,758
12	Enter the amount of line 11 you want: Credited to 20 estimated tax Refunded			128,925,758

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here: Signature of officer: *Julie K. Jones* Date: 3-15-10 Title: Vice President & Treasurer

Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Phone no.	

Form **843**
 (Rev. February 2009)
 Department of the Treasury
 Internal Revenue Service

Claim for Refund and Request for Abatement

OMB No. 1545-0024

▶ See separate instructions.

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes and an employer's claim for FICA tax, RRTA tax, or income tax withholding), shown on line 3,
- (b) an abatement of FUTA tax or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

Do not use Form 843 if your claim or request involves:

- (a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Name(s) SALEM FINANCIAL INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC	Your social security number
Address (number, street, and room or suite no.) P.O. BOX 483	Spouse's social security number
City or town, state, and ZIP code WINSTON-SALEM, NC 27102	Employer identification number (EIN) 51 : 0349647
Name and address shown on return if different from above BRANCH INVESTMENTS LLC, 1007 ORANGE ST, STE 1407, WILMINGTON, DE 19801	Daytime telephone number ()

1 Period. Prepare a separate Form 843 for each tax period From 01 / 01 / 2005 to 12 / 31 / 2005	2 Amount to be refunded or abated \$ 25,785,151.60
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3 **Type of tax.** Indicate the type of tax to be refunded or abated or to which the interest, penalty, or addition to tax is related.
 Employment Estate Gift Excise Income

4 **Type of penalty.** If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: **6662(a)**

5a **Interest, penalties, and additions to tax.** Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.)
 Interest was assessed as a result of IRS errors or delays.
 A penalty or addition to tax was the result of erroneous written advice from the IRS.
 Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.

b Date(s) of payment(s) ▶ **03/01/2010**

6 **Original return.** Indicate the type of return filed to which the tax, interest, penalty, or addition to tax relates.
 706 709 940 941 943 945
 990-PF 1040 1120 4720 Other (specify) ▶

7 **Explanation.** Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.

See attached

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Jacqui L. Jones Vice President & Treasurer Date **3-10-2010**

Signature (spouse, if joint return) _____ Date _____

Paid Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code ▶	EIN	Phone no. ()	

Salem Financial, Inc. as Successor in Interest to Branch Investments LLC
EIN: 51-0349647

Attachment to Form 1120X and Form 843

This claim is being filed to correct the employer identification number (EIN) listed on Form 1120X and Form 843 from the claim originally filed on March 11, 2010 under EIN: 26-0229198 and should supersede that claim.

**SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO
BRANCH INVESTMENTS LLC**

Claim for Refund

Tax Year: 2005

Tax: \$128,925,758

Penalty: \$25,785,151.60

Interest: \$42,624,823.82

Total Amount of Claim for Refund: \$197,335,733.42 plus interest, or such greater amount as is legally refundable.

Procedural History

On August 28, 2006, Branch Investments LLC and Subsidiaries ("Branch") timely filed its consolidated U.S. federal income tax return for the taxable year ending December 31, 2005 (the "2005 Tax Year"). After examining Branch's return for the 2005 Tax Year, the Internal Revenue Service ("IRS") proposed various adjustments, described below, related to a financing provided by Barclays Bank PLC ("Barclays") (referred to as the "Barclays Financing"). (See Exhibit A (Forms 5701 for issues IE-001; IE-002; IE-003; IE-004; IE-005; IE-006 (Aug. 4, 2009)).)

On February 28, 2009, Branch merged with Salem Financial, Inc. This merger caused Branch to cease to exist. As a result, Salem Financial, Inc. ("Salem") is the appropriate party to file this administrative claim for refund as the successor in interest to Branch.

On February 12, 2010, the IRS issued a Statutory Notice of Deficiency for the 2005 Tax Year to Branch Investments LLC and Subsidiaries c/o Salem Financial, Inc. (Exhibit B.) The Notice of Deficiency made the following adjustments related to the Barclays Financing:

- (1) disallowed foreign tax credits claimed under section 901 in the amount of \$110,319,157.00;
- (2) increased taxable income by \$53,385,489 for fee income purportedly received by Branch and reduced taxable income by \$1,845,621 for interest income received by Branch, for a net increase in taxable income of \$51,539,868;
- (3) disallowed deductions for transaction costs claimed under section 162 in the amount of \$1,621,847;
- (4) reclassified \$533,833,963 of foreign source income as domestic source income; and
- (5) imposed a penalty under section 6662 in the amount of \$25,785,151.60.

On February 16, 2010, Salem executed Form 4089 in which it consented to the immediate assessment of tax in the amount of \$128,925,756 and to the imposition of penalties in the amount of \$25,785,151.60 for the 2005 Tax Year. (Exhibit C.) Pursuant to the terms of the Form 4089, Salem reserved the right to file a claim for refund.

On March 1, 2010, the IRS assessed the taxes and penalties set forth in the Notice of Deficiency plus deficiency interest as provided by law, and on March 1, 2010, Salem fully satisfied the assessed liability.¹ Salem now files this claim for refund seeking to recover the \$197,335,733.42 in taxes, penalties, and deficiency interest it paid. This claim sets forth a statement of the facts and the legal grounds for recovery. This claim is being filed pursuant to the letter agreement between BB&T Corporation (“BB&T”) and the IRS dated August 12, 2009.

Statement of Facts

During the 2005 Tax Year, Branch was a partially owned subsidiary of Branch Banking and Trust Company (“Bank”), a commercial bank chartered by the State of North Carolina. Bank was a wholly owned subsidiary of BB&T, a holding company organized under the laws of the State of North Carolina that is engaged in a broad range of financial services through its subsidiaries.

Prior to the Barclays Financing, Branch was a wholly owned subsidiary of Bank and was part of the affiliated group for which BB&T, as parent, filed consolidated federal income tax returns. On August 1, 2002, Branch issued preferred shares representing 22 percent of its voting power to Asteras Holding LLC (“Asteras”), a company unrelated to BB&T, in exchange for \$65 million, and Branch thereby ceased to be a member of the BB&T consolidated group for federal income tax purposes. Accordingly, Branch filed a separate U.S. federal income tax return for the 2005 Tax Year.

In 2002, Bank entered into the Barclays Financing through Branch in order to obtain low-cost, diversified funding. Specifically, on August 1, 2002, Branch borrowed \$1.5 billion from Barclays at an interest rate approximately 290 basis points below Branch’s normal cost of funds. Barclays, a corporation organized under the laws of England and Wales, was able to offer funding to Branch at such favorable rates because the Barclays Financing was structured in a manner that allowed Barclays to obtain certain U.K. tax benefits.

An abbreviated summary of the facts of the Barclays Financing follows:

- (1) Bank contributed income-generating assets to Branch.

¹ Salem paid \$128,925,758 in additional tax on March 1, 2010 in accordance with the amount set forth in the Notice of Deficiency. The March 1, 2010 Notice of Tax Due on Federal Tax Return, however, listed the amount of additional tax due as \$128,925,756. Salem, therefore, seeks a refund of the entire \$128,925,758 in additional tax paid on March 1, 2010. The Notice of Tax Due on Federal Tax Return also incorrectly listed “Form Number” as 1041 instead of Form 1120.

- (2) Branch contributed the majority of these income-generating assets to Branch Finance LLC (“DelCo”), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes.
- (3) Branch contributed additional income-generating assets and part of its interests in DelCo to Branch Funding Trust (“Trust”), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes. The Trust was subject to U.K. income tax after the Barclays Financing was implemented. Branch Management LLC (“Manager”), a limited liability company that elected to be treated as a corporation for U.S. federal income tax purposes, was appointed manager of the Trust. Manager was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns. Delaware Trust Capital Management, Inc. (“U.S. Trustee”) was initially appointed the trustee of the Trust.
- (4) Branch contributed part of its interest in the Trust to Branch Holdings LLC (“NewCo”), a newly formed entity that initially elected to be treated as a corporation for U.S. federal income tax purposes. NewCo was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns.
- (5) After Branch’s contribution of part of its interest in the Trust to NewCo, the Trust was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and NewCo as its partners.
- (6) Upon Trust becoming a partnership, DelCo was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and the Trust as its partners.
- (7) Barclays contributed approximately \$1.5 billion to the Trust in exchange for various classes of interests in the Trust. Branch and Barclays also executed a series of agreements with respect to certain interests in the Trust (including a Repurchase Agreement and a Zero Coupon Swap) that were collectively treated as a secured loan from Barclays to Branch for U.S. federal income tax purposes.
- (8) Branch and DelCo created Branch Administrators Limited (“U.K. Trustee”), a newly formed entity that elected to be treated as a partnership for U.S. federal income tax purposes. The U.K. Trustee replaced the U.S. Trustee as trustee of the Trust.
- (9) Branch lent approximately \$1.5 billion to affiliates of BB&T for use in their ordinary course of business.
- (10) On January 16, 2005, NewCo elected to be treated as a disregarded entity for U.S. federal income tax purposes. As a result, Trust, DelCo, and the U.K. Trustee

became disregarded entities wholly owned by Branch for U.S. federal income tax purposes.

(11) The Barclays Financing was terminated on April 4, 2007.

During the term of the Barclays Financing, the Trust earned income and paid U.K. tax on that income. The Trust then distributed the after-tax proceeds to a blocked account owned by Barclays, and Barclays was obligated to immediately recontribute such distributions to the Trust. These distributions and recontributions were disregarded for U.S. federal income tax purposes. Branch reported the Trust's income on its consolidated U.S. federal income tax return, and Branch also credited the U.K. taxes paid by the Trust against its U.S. taxes.

The transaction structure made it possible for Barclays to obtain certain U.K. tax benefits for which Barclays compensated Branch through a reduction in the interest costs of the secured loan. Branch treated any LIBOR-based payments that it made to Barclays with respect to the secured loan as interest expense for both financial accounting purposes and U.S. federal income tax purposes (deducting it as such under section 163). Branch treated amounts owed by Barclays pursuant to the terms of the secured loan as reducing overall interest expense for U.S. federal income tax purposes. To the extent the amounts owed by Barclays exceeded the LIBOR-based payments Branch owed to Barclays, Branch reported such net income as interest income for U.S. tax purposes.

In addition, Branch deducted the professional fees incurred in connection with the transaction as ordinary and necessary business expenses under section 162.

Legal Grounds for Recovery

I. Disallowance of Foreign Tax Credits

The U.K. taxes paid by Branch in connection with the Barclays Financing were creditable foreign income taxes for U.S. federal income tax purposes under sections 901 and 904 and the regulations thereunder. Further, based on the relevant facts and circumstances, the foreign tax credits claimed by Branch with respect to the Barclays Financing should be respected under the economic substance, substance-over-form, step transaction and any similar doctrines, to the extent such doctrines are applicable. *See, e.g., Compaq Computer Corp. v. Comm'r*, 277 F.3d 778 (5th Cir. 2001); *IES Indus., Inc. v. United States*, 253 F.3d 350 (8th Cir. 2001); Notice 98-5, 1998-1 C.B. 334 (Jan. 20, 1998).

In addition, section 269 is inapplicable to the foreign tax credits claimed by Branch, and the foreign tax credits may not be disallowed on the grounds that Asteras' acquisition of preferred shares in Branch did not result in the deconsolidation of Branch from BB&T's consolidated group for U.S. federal income tax purposes.

To the extent that the foreign tax credits claimed by Branch are denied, Branch should be entitled to a deduction for the U.K. taxes paid by the Trust under section 162 or section 164.

Further, to the extent that credits or deductions for the U.K. taxes paid by the Trust are denied, then the corresponding income should be eliminated for U.S. federal income tax purposes.

II. Adjustments for Fee Income and Interest Expense

As stated above, Branch owed Barclays a monthly interest amount pursuant to the terms of the secured loan based on a floating rate tied to 1-month LIBOR less a fixed amount due from Barclays. Whenever Branch's floating rate interest obligation was less than the fixed amount, Branch would receive a net payment from Barclays equal to the difference between the two amounts. Based on the 1-month LIBOR rates in effect during 2005, Branch's floating rate interest obligation (\$51,539,868) was less than the fixed amount due from Barclays (\$53,385,489). Barclays, therefore, paid Branch the difference (\$1,845,621). Branch reported the net amount received from Barclays in its taxable income for the 2005 Tax Year on an accrual basis.²

By making two separate adjustments to Branch's taxable income, the Notice of Deficiency effectively disallowed an interest expense deduction for Branch's \$51,539,868 floating rate interest expense without factoring in a reduction for the fixed amount due from Barclays. First, the Notice of Deficiency increased taxable income by \$53,385,489 and incorrectly characterized this amount as "fee income" that was "not properly reported." This \$53,385,489 represents the fixed amount by which Branch's floating rate interest obligation was reduced under the terms of the secured loan. The total fixed amount due from Barclays is merely part of the formula by which Branch's total interest obligation was calculated and reported on its tax return. Second, the Notice of Deficiency decreased taxable income by \$1,845,621 for the payments Branch actually received from Barclays.

Based on the relevant facts and circumstances, Branch should be entitled to exclude the entire net adjustment of \$51,539,868 from income because Branch's interest obligation represents interest on genuine indebtedness and is deductible under section 163. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

Alternatively, to the extent that a deduction for the \$51,539,868 in interest expense is denied or the foreign tax credits are denied, \$53,385,489 should be excluded from income.

In addition, the Notice of Deficiency's adjustments for "fee income" and interest expense were based on a cash method of reporting. Branch, however, was an accrual method taxpayer. If the Notice of Deficiency's adjustments are deemed to be correct, Branch is nevertheless entitled to a refund to the extent that the adjustments exceed the actual income and expenses accrued and reported by Branch as a result of the Barclays Financing.

² The amounts of \$51,539,868 for Branch's floating rate interest obligation, \$53,385,489 for the fixed amount owed by Barclays, and \$1,845,621 for the net amount of income reported by Branch are from the Notice of Deficiency, which does not reflect the accrued amounts in Branch's tax reporting.

III. Disallowance of Deductions for Transaction Costs

Based on the relevant facts and circumstances, the deductions taken by Branch for transaction costs paid with respect to the Barclays Financing cannot be disregarded because the financing transaction is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent such doctrines are applicable.

IV. Reclassification of Foreign Source Income

Foreign source income in the amount of \$533,833,963 cannot be reclassified as domestic source income because Branch properly reported this income as foreign source income in accordance with Article 24(2)(a) of the Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, U.S.-U.K., July 24, 2001. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

V. Penalties

Branch is not subject to a section 6662(a) penalty for substantial understatement of income tax or for negligence or disregard of rules or regulations because there is substantial authority to sustain Branch's position, including relevant case law and the plain meaning of the applicable Code provisions and regulations thereunder, and Branch can otherwise demonstrate reasonable cause under section 6664.

Claim for Refund

Branch, therefore, seeks a refund in the amount of \$128,925,758 for taxes paid, \$25,785,151.60 for penalties paid, and \$42,624,823.82 for deficiency interest paid plus statutory interest on the amount to be refunded, or such greater amount as is legally refundable. In addition, pursuant to the provisions of Revenue Procedure 2000-26, 2000-1 C.B. 1257, Branch requests that the IRS apply the net interest rate of zero pursuant to section 6621(d) to the tax years ending December 31, 2002, December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and June 15, 2007, as well as all other tax years that are open for such purposes on March 11, 2010.

Request for Expedited Denial Pursuant to IR 1600

As explained above, this refund claim for the 2005 Tax Year is based solely on contested income tax issues considered in previously examined returns. Therefore, pursuant to IR 1600 (Apr. 26, 1976) and the agreement between BB&T and the IRS, Branch now requests that the IRS immediately reject this claim for refund and promptly issue a notice of claim disallowance.

Exhibit E

Form **1120X**
 (Rev. January 2008)
 Department of the Treasury
 Internal Revenue Service

**Amended U.S. Corporation
 Income Tax Return**

OMB No. 1545-0132

For tax year ending

2006/12

(Enter month and year.)

Please Type or Print	Name	SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC	Employer identification number	51-0349647
	Number, street, and room or suite no. (If a P.O. box, see instructions.)	P.O. BOX 483		
	City or town, state, and ZIP code	WINSTON-SALEM, NC 27102		
	Telephone number (optional)			

Enter name and address used on original return (If same as above, write "Same.")

BRANCH INVESTMENTS LLC 1007 ORANGE ST, STE 1407 WILMINGTON, DE 19801 EIN: 51-0349647

Internal Revenue Service Center
 where original return was filed OGDEN, UT

Fill in applicable items and use Part II on the back to explain any changes

Part I	Income and Deductions (see instructions)	(a) As originally reported or as previously adjusted	(b) Net change— increase or (decrease)— explain in Part II	(c) Correct amount
1	Total income (Form 1120 or 1120-A, line 11)	753,608,891	-56,227,114	697,381,777
2	Total deductions (total of lines 27 and 29c, Form 1120, or lines 23 and 25c, Form 1120-A)	52,223,619	23,790,573	76,014,192
3	Taxable income. Subtract line 2 from line 1	701,385,272	-80,017,687	621,367,585
4	Tax (Form 1120, line 31, or Form 1120-A, line 27)	245,484,845	-144,201,222	101,283,623

Payments and Credits (see instructions)

5 a	Overpayment in prior year allowed as a credit	8,550,332		8,550,332
b	Estimated tax payments	100,000,000		100,000,000
c	Refund applied for on Form 4466			
d	Subtract line 5c from the sum of lines 5a and 5b	108,550,332	0	108,550,332
e	Tax deposited with Form 7004	5,000,000		5,000,000
f	Credit from Form 2439			
g	Credit for federal tax on fuels and other refundable credits			
6	Tax deposited or paid with (or after) the filing of the original return			132,691,708
7	Add lines 5d through 6, column (c)			246,242,040
8	Overpayment, if any, as shown on original return or as later adjusted			757,195
9	Subtract line 8 from line 7			245,484,845

Tax Due or Overpayment (see instructions)

10	Tax due. Subtract line 9 from line 4, column (c). If paying by check, make it payable to the "United States Treasury"			0
11	Overpayment. Subtract line 4, column (c), from line 9			144,201,222
12	Enter the amount of line 11 you want: Credited to 20 <u> </u> estimated tax Refunded			144,201,222

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here	Signature of officer	Date	Title
	<i>Julie A. Jones</i>	3-15-2010	Vice President & Treasurer
Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>
	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Preparer's SSN or PTIN
		Phone no.	

Part II Explanation of Changes to Items in Part I (Enter the line number from page 1 for the items you are changing, and give the reason for each change. Show any computation in detail. Also, see **What To Attach** on page 3 of the instructions.)

If the change is due to a net operating loss carryback, a capital loss carryback, or a general business credit carryback, see **Carryback Claims** on page 3, and check here

SEE ATTACHED.

Area with horizontal dashed lines for providing details of changes.

Form **843**
 (Rev. February 2009)
 Department of the Treasury
 Internal Revenue Service

Claim for Refund and Request for Abatement

OMB No. 1545-0024

▶ See separate instructions.

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes and an employer's claim for FICA tax, RRTA tax, or income tax withholding), shown on line 3,
- (b) an abatement of FUTA tax or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

Do not use Form 843 if your claim or request involves:

- (a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Name(s) SALEM FINANCIAL INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC	Your social security number
Address (number, street, and room or suite no.) P.O. BOX 483	Spouse's social security number
City or town, state, and ZIP code WINSTON-SALEM, NC 27102	Employer identification number (EIN) 51 0349647
Name and address shown on return if different from above BRANCH INVESTMENTS LLC, 1007 ORANGE ST, STE 1407, WILMINGTON, DE 19801	Daytime telephone number ()

1 Period. Prepare a separate Form 843 for each tax period From 01 / 01 / 2006 to 12 / 31 / 2006	2 Amount to be refunded or abated \$ 26,538,341.60
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3 **Type of tax.** Indicate the type of tax to be refunded or abated or to which the interest, penalty, or addition to tax is related.
 Employment Estate Gift Excise Income

4 **Type of penalty.** If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: **6662(a)**

5a **Interest, penalties, and additions to tax.** Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.)

Interest was assessed as a result of IRS errors or delays.

A penalty or addition to tax was the result of erroneous written advice from the IRS.

Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.

b Date(s) of payment(s) ▶ **03/01/2010**

6 **Original return.** Indicate the type of return filed to which the tax, interest, penalty, or addition to tax relates.

706 709 940 941 943 945

990-PF 1040 1120 4720 Other (specify) ▶

7 **Explanation.** Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.

See attached

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Julie A. Jones *Vice President & Treasurer* **3-15-10**
 Signature (Title, if applicable. Claims by corporations must be signed by an officer.) Date

Signature (spouse, if joint return) Date

Paid Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code ▶	EIN	Phone no. ()	

Salem Financial, Inc. as Successor in Interest to Branch Investments LLC
EIN: 51-0349647

Attachment to Form 1120X and Form 843

This claim is being filed to correct the employer identification number (EIN) listed on Form 1120X and Form 843 from the claim originally filed on March 11, 2010 under EIN: 26-0229198 and should supersede that claim.

**SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO
BRANCH INVESTMENTS LLC**

Claim for Refund

Tax Year: 2006

Tax: \$144,201,222

Penalty: \$26,538,341.60

Interest: \$28,778,709.75

Total Amount of Claim for Refund: \$199,518,273.35 plus interest, or such greater amount as is legally refundable.

Procedural History

On August 30, 2007, Branch Investments LLC and Subsidiaries (“Branch”) timely filed a consolidated U.S. federal income tax return (the “2006 Tax Return”) for the taxable year ending December 31, 2006 (the “2006 Tax Year”). On September 14, 2007, Branch filed a supplemental consolidated U.S. federal income tax return on Form 1120 for the 2006 Tax Year (the “Supplemental 2006 Tax Return”), which reduced taxable income by \$19,035,408 and requested that the resulting overpayment of \$7,419,588 be credited to its 2007 estimated tax. Of that amount, \$6,662,393 was not credited to the 2007 tax year or any other tax year or otherwise refunded to Branch.

After examining Branch’s return for the 2006 Tax Year, the Internal Revenue Service (“IRS”) proposed various adjustments, described below, related to a financing provided by Barclays Bank PLC (“Barclays”) (referred to as the “Barclays Financing”). (See Exhibit A (Forms 5701 for issues IE-001; IE-002; IE-003; IE-004; IE-005; IE-006 (Aug. 4, 2009)).)

On March 26, 2009, Branch filed an amended return for its 2006 Tax Year to carry back excess foreign tax credits in the amount of \$4,847,121 from the taxable year ending June 15, 2007 (the “Amended 2006 Tax Return”).

On February 28, 2009, Branch merged with Salem Financial, Inc. This merger caused Branch to cease to exist. As a result, Salem Financial, Inc. (“Salem”) is the appropriate party to file this administrative claim for refund as the successor in interest to Branch.

On February 12, 2010, the IRS issued a Statutory Notice of Deficiency for the 2006 Tax Year to Branch Investments LLC and Subsidiaries c/o Salem Financial, Inc. (Exhibit B.) The Notice of Deficiency made the following adjustments related to the Barclays Financing:

- (1) disallowed foreign tax credits claimed under section 901 in the amount of \$111,347,911.00;
- (2) denied the refund claimed on Branch’s Amended 2006 Tax Return for \$4,847,121 in foreign tax credits claimed under section 904(c);

- (3) increased taxable income by \$56,227,114 for fee income purportedly received by Branch and disallowed \$22,277,060 in interest expense deductions, for a total increase in taxable income of \$78,504,174;
- (4) disallowed deductions for transaction costs claimed under section 162 in the amount of \$1,513,513;
- (5) reclassified \$519,111,003 of foreign source income as domestic source income; and
- (6) imposed a penalty under section 6662 in the amount of \$26,538,341.60.

The Notice of Deficiency increased Branch's tax liability for the 2006 Tax Year by \$139,354,101 based on the adjustments related to the Barclays Financing in items (1) through (6), above. After taking into account the 2006 overpayment of \$6,662,393, the Notice of Deficiency increased Branch's tax liability by a total amount of \$132,691,708 rather than \$139,354,101.

On February 16, 2010, Salem executed Form 4089 in which it consented to the immediate assessment of tax in the amount of \$132,691,708 and to the imposition of penalties in the amount of \$26,538,341.60 for the 2006 Tax Year. (Exhibit C.) Pursuant to the terms of the Form 4089, Salem reserved the right to file a claim for refund.

On March 1, 2010, the IRS assessed the taxes and penalties set forth in the Notice of Deficiency plus deficiency interest as provided by law, and on March 1, 2010, Salem fully satisfied the assessed liability. Branch's \$139,354,101 tax liability arising from the adjustments related to the Barclays Financing was fully satisfied by the tax overpayment of \$6,662,393 (which had been paid before Branch filed its 2006 Tax Return) plus the \$132,691,708 paid on March 1, 2010.

Accordingly, Salem now files this claim seeking to recover taxes paid in the total amount of \$144,201,222, consisting of the \$6,662,393 overpayment remaining from the 2006 Tax Year, the \$4,847,121 refund for the foreign tax credit carryback claimed on the Amended 2006 Tax Return, and the \$132,691,708 paid on March 1, 2010. In addition, Salem seeks to recover \$26,538,341.60 in penalties paid and \$28,778,709.75 in interest paid. This claim is being filed pursuant to the letter agreement between BB&T Corporation ("BB&T") and the IRS dated August 12, 2009.

Statement of Facts

During the 2006 Tax Year, Branch was a partially owned subsidiary of Branch Banking and Trust Company ("Bank"), a commercial bank chartered by the State of North Carolina. Bank was a wholly owned subsidiary of BB&T, a holding company organized under the laws of the State of North Carolina that is engaged in a broad range of financial services through its subsidiaries.

Prior to the Barclays Financing, Branch was a wholly owned subsidiary of Bank and was part of the affiliated group for which BB&T, as parent, filed consolidated federal income tax returns. On August 1, 2002, Branch issued preferred shares representing 22 percent of its voting power to Asteras Holding LLC (“Asteras”), a company unrelated to BB&T, in exchange for \$65 million, and Branch thereby ceased to be a member of the BB&T consolidated group for federal income tax purposes. Accordingly, Branch filed a separate U.S. federal income tax return for the 2006 Tax Year.

In 2002, Bank entered into the Barclays Financing through Branch in order to obtain low-cost, diversified funding. Specifically, on August 1, 2002, Branch borrowed \$1.5 billion from Barclays at an interest rate approximately 290 basis points below Branch’s normal cost of funds. Barclays, a corporation organized under the laws of England and Wales, was able to offer funding to Branch at such favorable rates because the Barclays Financing was structured in a manner that allowed Barclays to obtain certain U.K. tax benefits.

An abbreviated summary of the facts of the Barclays Financing follows:

- (1) Bank contributed income-generating assets to Branch.
- (2) Branch contributed the majority of these income-generating assets to Branch Finance LLC (“DelCo”), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes.
- (3) Branch contributed additional income-generating assets and part of its interests in DelCo to Branch Funding Trust (“Trust”), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes. The Trust was subject to U.K. income tax after the Barclays Financing was implemented. Branch Management LLC (“Manager”), a limited liability company that elected to be treated as a corporation for U.S. federal income tax purposes, was appointed manager of the Trust. Manager was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns. Delaware Trust Capital Management, Inc. (“U.S. Trustee”) was initially appointed the trustee of the Trust.
- (4) Branch contributed part of its interest in the Trust to Branch Holdings LLC (“NewCo”), a newly formed entity that initially elected to be treated as a corporation for U.S. federal income tax purposes. NewCo was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns.
- (5) After Branch’s contribution of part of its interest in the Trust to NewCo, the Trust was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and NewCo as its partners.

- (6) Upon Trust becoming a partnership, DelCo was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and the Trust as its partners.
- (7) Barclays contributed approximately \$1.5 billion to the Trust in exchange for various classes of interests in the Trust. Branch and Barclays also executed a series of agreements with respect to certain interests in the Trust (including a Repurchase Agreement and a Zero Coupon Swap) that were collectively treated as a secured loan from Barclays to Branch for U.S. federal income tax purposes.
- (8) Branch and DelCo created Branch Administrators Limited (“U.K. Trustee”), a newly formed entity that elected to be treated as a partnership for U.S. federal income tax purposes. The U.K. Trustee replaced the U.S. Trustee as trustee of the Trust.
- (9) Branch lent approximately \$1.5 billion to affiliates of BB&T for use in their ordinary course of business.
- (10) On January 16, 2005, NewCo elected to be treated as a disregarded entity for U.S. federal income tax purposes. As a result, Trust, DelCo, and the U.K. Trustee became disregarded entities wholly owned by Branch for U.S. federal income tax purposes.
- (11) The Barclays Financing was terminated on April 4, 2007.

During the term of the Barclays Financing, the Trust earned income and paid U.K. tax on that income. The Trust then distributed the after-tax proceeds to a blocked account owned by Barclays, and Barclays was obligated to immediately recontribute such distributions to the Trust. These distributions and recontributions were disregarded for U.S. federal income tax purposes. Branch reported the Trust’s income on its consolidated U.S. federal income tax return, and Branch also credited the U.K. taxes paid by the Trust against its U.S. taxes.

The transaction structure made it possible for Barclays to obtain certain U.K. tax benefits for which Barclays compensated Branch through a reduction in the interest costs of the secured loan. Branch treated any LIBOR-based payments that it made to Barclays with respect to the secured loan as interest expense for both financial accounting purposes and U.S. federal income tax purposes (deducting it as such under section 163). Branch treated amounts owed by Barclays pursuant to the terms of the secured loan as reducing overall interest expense for U.S. federal income tax purposes. To the extent the amounts owed by Barclays exceeded the LIBOR-based payments Branch owed to Barclays, Branch reported such net income as interest income for U.S. tax purposes.

In addition, Branch deducted the professional fees incurred in connection with the transaction as ordinary and necessary business expenses under section 162.

Legal Grounds for Recovery

I. Disallowance of Foreign Tax Credits

The U.K. taxes paid by Branch in connection with the Barclays Financing were creditable foreign income taxes for U.S. federal income tax purposes under sections 901 and 904 and the regulations thereunder. Further, based on the relevant facts and circumstances, the foreign tax credits claimed by Branch with respect to the Barclays Financing should be respected under the economic substance, substance-over-form, step transaction and any similar doctrines, to the extent such doctrines are applicable. See, e.g., *Compaq Computer Corp. v. Comm'r*, 277 F.3d 778 (5th Cir. 2001); *IES Indus., Inc. v. United States*, 253 F.3d 350 (8th Cir. 2001); Notice 98-5, 1998-1 C.B. 334 (Jan. 20, 1998).

In addition, section 269 is inapplicable to the foreign tax credits claimed by Branch, and the foreign tax credits may not be disallowed on the grounds that Asteras' acquisition of preferred shares in Branch did not result in the deconsolidation of Branch from BB&T's consolidated group for U.S. federal income tax purposes.

To the extent that the foreign tax credits claimed by Branch are denied, Branch should be entitled to a deduction for the U.K. taxes paid by the Trust under section 162 or section 164. Further, to the extent that credits or deductions for the U.K. taxes paid by the Trust are denied, then the corresponding income should be eliminated for U.S. federal income tax purposes.

II. Adjustments for Fee Income and Interest Expense

As stated above, Branch owed Barclays a monthly interest amount pursuant to the terms of the secured loan based on a floating rate tied to 1-month LIBOR less a fixed amount due from Barclays. Based on the 1-month LIBOR rates in effect during 2006, Branch's floating rate interest obligation (\$78,504,174) was reduced by the fixed amount due from Barclays (\$56,227,114). Branch, therefore, made net payments to Barclays in the amount of \$22,277,060 and deducted this amount as interest expense.¹

By making two separate adjustments to Branch's taxable income, the Notice of Deficiency effectively disallowed an interest expense deduction for Branch's \$78,504,174 floating rate interest expense without factoring in a reduction for the fixed amount due from Barclays. First, the Notice of Deficiency increased taxable income by \$56,227,114 and incorrectly characterized this amount as "fee income" that was "not properly reported." This \$56,227,114 represents the fixed amount by which Branch's floating rate interest obligation was reduced under the terms of the secured loan. The total fixed amount due from Barclays is merely part of the formula by which Branch's total interest obligation was calculated and reported on its tax return. Second, the Notice of Deficiency denied Branch's interest expense deduction in the amount of \$22,277,060 for the net interest payments actually made to Barclays.

¹ The amounts of \$78,504,174 for Branch's floating rate interest obligation, \$56,227,114 for the fixed amount owed by Barclays, and \$22,277,060 for Branch's net payments are from the Notice of Deficiency, which does not reflect the accrued amounts in Branch's tax reporting.

Based on the relevant facts and circumstances, Branch should be entitled to exclude the entire adjustment of \$78,504,174 from income because Branch's interest obligation represents interest on genuine indebtedness and is deductible under section 163. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

Alternatively, to the extent that a deduction for the \$78,504,174 in interest expense is denied or the foreign tax credits are denied, \$56,227,114 should be excluded from income.

In addition, the Notice of Deficiency's adjustments for "fee income" and interest expense were based on a cash method of reporting. Branch, however, was an accrual method taxpayer. If the Notice of Deficiency's adjustments are deemed to be correct, Branch is nevertheless entitled to a refund to the extent that the adjustments exceed the actual income and expenses accrued and reported by Branch as a result of the Barclays Financing.

III. Disallowance of Deductions for Transaction Costs

Based on the relevant facts and circumstances, the deductions taken by Branch for transaction costs paid with respect to the Barclays Financing cannot be disregarded because the financing transaction is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent such doctrines are applicable.

IV. Reclassification of Foreign Source Income

Foreign source income in the amount of \$519,111,003 cannot be reclassified as domestic source income because Branch properly reported this income as foreign source income in accordance with Article 24(2)(a) of the Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, U.S.-U.K., July 24, 2001. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

V. Penalties

Branch is not subject to a section 6662(a) penalty for substantial understatement of income tax or for negligence or disregard of rules or regulations because there is substantial authority to sustain Branch's position, including relevant case law and the plain meaning of the applicable Code provisions and regulations thereunder, and Branch can otherwise demonstrate reasonable cause under section 6664.

Claim for Refund

Branch, therefore, seeks a refund in the amount of \$144,201,222 for taxes paid, \$26,538,341.60 for penalties paid, and \$28,778,709.75 for deficiency interest paid plus statutory

interest on the amount to be refunded, or such greater amount as is legally refundable. In addition, pursuant to the provisions of Revenue Procedure 2000-26, 2000-1 C.B. 1257, Branch requests that the IRS apply the net interest rate of zero pursuant to section 6621(d) to the tax years ending December 31, 2002, December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and June 15, 2007, as well as all other tax years that are open for such purposes on March 11, 2010.

Request for Expedited Denial Pursuant to IR 1600

As explained above, this refund claim for the 2006 Tax Year is based solely on contested income tax issues considered in previously examined returns. Therefore, pursuant to IR 1600 (Apr. 26, 1976) and the agreement between BB&T and the IRS, Branch now requests that the IRS immediately reject this claim for refund and promptly issue a notice of claim disallowance.

Exhibit F

Form **1120X**
 (Rev. January 2008)
 Department of the Treasury
 Internal Revenue Service

**Amended U.S. Corporation
 Income Tax Return**

OMB No. 1545-0132
For tax year ending
 2007/6
 (Enter month and year.)

Name SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC
Employer identification number 51-0349647
Number, street, and room or suite no. (If a P.O. box, see instructions.)
 P.O. BOX 483
City or town, state, and ZIP code WINSTON-SALEM, NC 27102
Telephone number (optional)

Enter name and address used on original return (if same as above, write "Same.")
BRANCH INVESTMENTS LLC 1007 ORANGE ST, STE 1407 WILMINGTON, DE 19801 EIN: 51-0349647
Internal Revenue Service Center where original return was filed OGDEN, UT

Fill in applicable items and use Part II on the back to explain any changes

Part I Income and Deductions (see instructions)		(a) As originally reported or as previously adjusted	(b) Net change— increase or (decrease)— explain in Part II	(c) Correct amount
1	Total income (Form 1120 or 1120-A, line 11)	353,366,336	-14,315,912	339,050,424
2	Total deductions (total of lines 27 and 29c, Form 1120, or lines 23 and 25c, Form 1120-A)	44,339,322	11,482,052	55,821,374
3	Taxable income. Subtract line 2 from line 1	309,027,014	-25,797,964	283,229,050
4	Tax (Form 1120, line 31, or Form 1120-A, line 27)	108,159,455	-36,255,749	71,903,706

Payments and Credits (see instructions)

5a	Overpayment in prior year allowed as a credit	757,195		757,195
b	Estimated tax payments	45,000,000		45,000,000
c	Refund applied for on Form 4466			
d	Subtract line 5c from the sum of lines 5a and 5b	45,757,195	0	45,757,195
e	Tax deposited with Form 7004	30,000,000		30,000,000
f	Credit from Form 2439			
g	Credit for federal tax on fuels and other refundable credits			
6	Tax deposited or paid with (or after) the filing of the original return			36,255,749
7	Add lines 5d through 6, column (c)			112,012,944
8	Overpayment, if any, as shown on original return or as later adjusted			3,853,489
9	Subtract line 8 from line 7			108,159,455

Tax Due or Overpayment (see instructions)

10	Tax due. Subtract line 9 from line 4, column (c). If paying by check, make it payable to the "United States Treasury"			0
11	Overpayment. Subtract line 4, column (c), from line 9			36,255,749
12	Enter the amount of line 11 you want: Credited to 20 <u> </u> estimated tax Refunded			36,255,749

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here
 Signature of officer: *Julie L. Jones* Date: 3-15-2010 Title: Vice President Treasurer

Paid Preparer's Use Only
 Preparer's signature: _____ Date: _____ Check if self-employed Preparer's SSN or PTIN: _____
 Firm's name (or yours if self-employed), address, and ZIP code: _____ EIN: _____ Phone no.: _____

Form **843**
 (Rev. February 2009)
 Department of the Treasury
 Internal Revenue Service

Claim for Refund and Request for Abatement

OMB No. 1545-0024

▶ See separate instructions.

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes and an employer's claim for FICA tax, RRTA tax, or income tax withholding), shown on line 3,
- (b) an abatement of FUTA tax or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

Do not use Form 843 if your claim or request involves:

- (a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Name(s) SALEM FINANCIAL INC. AS SUCCESSOR IN INTEREST TO BRANCH INVESTMENTS LLC		Your social security number
Address (number, street, and room or suite no.) P.O. BOX 483		Spouse's social security number
City or town, state, and ZIP code WINSTON-SALEM, NC 27102		Employer identification number (EIN) 51 0349647
Name and address shown on return if different from above BRANCH INVESTMENTS LLC, 1007 ORANGE ST, STE 1407, WILMINGTON, DE 19801		Daytime telephone number ()
1 Period. Prepare a separate Form 843 for each tax period From 01 / 01 / 2007 to 06 / 15 / 2007	2 Amount to be refunded or abated \$ 7,251,149.80	
3 Type of tax. Indicate the type of tax to be refunded or abated or to which the interest, penalty, or addition to tax is related. <input type="checkbox"/> Employment <input type="checkbox"/> Estate <input type="checkbox"/> Gift <input type="checkbox"/> Excise <input checked="" type="checkbox"/> Income		
4 Type of penalty. If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: 6662(a)		
5a Interest, penalties, and additions to tax. Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.) <input type="checkbox"/> Interest was assessed as a result of IRS errors or delays. <input type="checkbox"/> A penalty or addition to tax was the result of erroneous written advice from the IRS. <input checked="" type="checkbox"/> Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.		
b Date(s) of payment(s) ▶		03/01/2010
6 Original return. Indicate the type of return filed to which the tax, interest, penalty, or addition to tax relates. <input type="checkbox"/> 706 <input type="checkbox"/> 709 <input type="checkbox"/> 940 <input type="checkbox"/> 941 <input type="checkbox"/> 943 <input type="checkbox"/> 945 <input type="checkbox"/> 990-PF <input type="checkbox"/> 1040 <input checked="" type="checkbox"/> 1120 <input type="checkbox"/> 4720 <input type="checkbox"/> Other (specify) ▶		

7 **Explanation.** Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.

See attached

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature (Title, if applicable. Claims by corporations must be signed by an officer.) *Julie A. Jones Vice President & Treasurer* Date **3-15-10**

Signature (spouse, if joint return) _____ Date _____

Paid Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code ▶	EIN	Phone no. ()	

Salem Financial, Inc. as Successor in Interest to Branch Investments LLC
EIN: 51-0349647

Attachment to Form 1120X and Form 843

This claim is being filed to correct the employer identification number (EIN) listed on Form 1120X and Form 843 from the claim originally filed on March 11, 2010 under EIN: 26-0229198 and should supersede that claim.

**SALEM FINANCIAL, INC. AS SUCCESSOR IN INTEREST TO
BRANCH INVESTMENTS LLC**

Claim for Refund

Tax Year: 2007

Tax: \$36,255,749

Penalty: \$7,251,149.80

Interest: \$5,825,960.06

Total Amount of Claim for Refund: \$49,332,858.86 plus interest, or such greater amount as is legally refundable.

Procedural History

On September 12, 2008, Branch Investments LLC and Subsidiaries (“Branch”) timely filed its consolidated U.S. federal income tax return for the short taxable year January 1, 2007 through June 15, 2007 (the “2007 Tax Year”). After examining Branch’s return for the 2007 Tax Year, the Internal Revenue Service (“IRS”) proposed various adjustments, described below, related to a financing provided by Barclays Bank PLC (“Barclays”) (referred to as the “Barclays Financing”). (See Exhibit A (Forms 5701 for issues IE-001; IE-002; IE-003; IE-004; IE-005; IE-006 (Aug. 4, 2009)).)

On February 28, 2009, Branch merged with Salem Financial, Inc. This merger caused Branch to cease to exist. As a result, Salem Financial, Inc. (“Salem”) is the appropriate party to file this administrative claim for refund as the successor in interest to Branch.

On February 12, 2010, the IRS issued a Statutory Notice of Deficiency for the 2007 Tax Year to Branch Investments LLC and Subsidiaries c/o Salem Financial, Inc. (Exhibit B.) The Notice of Deficiency made the following adjustments related to the Barclays Financing:

- (1) disallowed foreign tax credits claimed under section 901 in the amount of \$27,226,462;
- (2) increased taxable income by \$14,315,912 for fee income purportedly received by Branch and disallowed \$6,262,796 and \$4,759,846 in interest expense deductions, for a total increase in taxable income of \$25,338,554;
- (3) disallowed deductions for transaction costs claimed under section 162 in the amount of \$459,410;
- (4) reclassified \$109,370,968 of foreign source income as domestic source income; and
- (5) imposed a penalty under section 6662 in the amount of \$7,251,149.80.

On February 16, 2010, Salem executed Form 4089 in which it consented to the immediate assessment of tax in the amount of \$36,255,749 and to the imposition of penalties in the amount of \$7,251,149.80 for the 2007 Tax Year. (Exhibit C.) Pursuant to the terms of the Form 4089, Salem reserved the right to file a claim for refund.

On March 1, 2010, the IRS assessed the taxes and penalties set forth in the Notice of Deficiency plus deficiency interest as provided by law, and on March 1, 2010, Salem fully satisfied the assessed liability. Salem now files this claim for refund seeking to recover the \$49,332,858.86 in taxes, penalties, and deficiency interest it paid. This claim sets forth a statement of the facts and the legal grounds for recovery. This claim is being filed pursuant to the letter agreement between BB&T Corporation ("BB&T") and the IRS dated August 12, 2009.

Statement of Facts

During the 2007 Tax Year, Branch was a partially owned subsidiary of Branch Banking and Trust Company ("Bank"), a commercial bank chartered by the State of North Carolina. Bank was a wholly owned subsidiary of BB&T, a holding company organized under the laws of the State of North Carolina that is engaged in a broad range of financial services through its subsidiaries.

Prior to the Barclays Financing, Branch was a wholly owned subsidiary of Bank and was part of the affiliated group for which BB&T, as parent, filed consolidated federal income tax returns. On August 1, 2002, Branch issued preferred shares representing 22 percent of its voting power to Asters Holding LLC ("Asters"), a company unrelated to BB&T, in exchange for \$65 million, and Branch thereby ceased to be a member of the BB&T consolidated group for federal income tax purposes. Accordingly, Branch filed a separate U.S. federal income tax return for the 2007 Tax Year.

In 2002, Bank entered into the Barclays Financing through Branch in order to obtain low-cost, diversified funding. Specifically, on August 1, 2002, Branch borrowed \$1.5 billion from Barclays at an interest rate approximately 290 basis points below Branch's normal cost of funds. Barclays, a corporation organized under the laws of England and Wales, was able to offer funding to Branch at such favorable rates because the Barclays Financing was structured in a manner that allowed Barclays to obtain certain U.K. tax benefits.

An abbreviated summary of the facts of the Barclays Financing follows:

- (1) Bank contributed income-generating assets to Branch.
- (2) Branch contributed the majority of these income-generating assets to Branch Finance LLC ("DelCo"), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes.
- (3) Branch contributed additional income-generating assets and part of its interests in DelCo to Branch Funding Trust ("Trust"), a newly formed entity that initially elected to be treated as a disregarded entity for U.S. federal income tax purposes.

The Trust was subject to U.K. income tax after the Barclays Financing was implemented. Branch Management LLC (“Manager”), a limited liability company that elected to be treated as a corporation for U.S. federal income tax purposes, was appointed manager of the Trust. Manager was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns. Delaware Trust Capital Management, Inc. (“U.S. Trustee”) was initially appointed the trustee of the Trust.

- (4) Branch contributed part of its interest in the Trust to Branch Holdings LLC (“NewCo”), a newly formed entity that initially elected to be treated as a corporation for U.S. federal income tax purposes. NewCo was part of the affiliated group for which Branch, as parent, filed consolidated U.S. federal income tax returns.
- (5) After Branch’s contribution of part of its interest in the Trust to NewCo, the Trust was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and NewCo as its partners.
- (6) Upon Trust becoming a partnership, DelCo was treated as a partnership for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b), with Branch and the Trust as its partners.
- (7) Barclays contributed approximately \$1.5 billion to the Trust in exchange for various classes of interests in the Trust. Branch and Barclays also executed a series of agreements with respect to certain interests in the Trust (including a Repurchase Agreement and a Zero Coupon Swap) that were collectively treated as a secured loan from Barclays to Branch for U.S. federal income tax purposes.
- (8) Branch and DelCo created Branch Administrators Limited (“U.K. Trustee”), a newly formed entity that elected to be treated as a partnership for U.S. federal income tax purposes. The U.K. Trustee replaced the U.S. Trustee as trustee of the Trust.
- (9) Branch lent approximately \$1.5 billion to affiliates of BB&T for use in their ordinary course of business.
- (10) On January 16, 2005, NewCo elected to be treated as a disregarded entity for U.S. federal income tax purposes. As a result, Trust, DelCo, and the U.K. Trustee became disregarded entities wholly owned by Branch for U.S. federal income tax purposes.
- (11) The Barclays Financing was terminated on April 4, 2007.

During the term of the Barclays Financing, the Trust earned income and paid U.K. tax on that income. The Trust then distributed the after-tax proceeds to a blocked account owned by Barclays, and Barclays was obligated to immediately recontribute such distributions to the Trust.

These distributions and recontributions were disregarded for U.S. federal income tax purposes. Branch reported the Trust's income on its consolidated U.S. federal income tax return, and Branch also credited the U.K. taxes paid by the Trust against its U.S. taxes.

The transaction structure made it possible for Barclays to obtain certain U.K. tax benefits for which Barclays compensated Branch through a reduction in the interest costs of the secured loan. Branch treated any LIBOR-based payments that it made to Barclays with respect to the secured loan as interest expense for both financial accounting purposes and U.S. federal income tax purposes (deducting it as such under section 163). Branch treated amounts owed by Barclays pursuant to the terms of the secured loan as reducing overall interest expense for U.S. federal income tax purposes. To the extent the amounts owed by Barclays exceeded the LIBOR-based payments Branch owed to Barclays, Branch reported such net income as interest income for U.S. tax purposes.

In addition, Branch deducted the professional fees incurred in connection with the transaction as ordinary and necessary business expenses under section 162.

Legal Grounds for Recovery

I. Disallowance of Foreign Tax Credits

The U.K. taxes paid by Branch in connection with the Barclays Financing were creditable foreign income taxes for U.S. federal income tax purposes under sections 901 and 904 and the regulations thereunder. Further, based on the relevant facts and circumstances, the foreign tax credits claimed by Branch with respect to the Barclays Financing should be respected under the economic substance, substance-over-form, step transaction and any similar doctrines, to the extent such doctrines are applicable. *See, e.g., Compaq Computer Corp. v. Comm'r*, 277 F.3d 778 (5th Cir. 2001); *IES Indus., Inc. v. United States*, 253 F.3d 350 (8th Cir. 2001); Notice 98-5, 1998-1 C.B. 334 (Jan. 20, 1998).

In addition, section 269 is inapplicable to the foreign tax credits claimed by Branch, and the foreign tax credits may not be disallowed on the grounds that Asteras' acquisition of preferred shares in Branch did not result in the deconsolidation of Branch from BB&T's consolidated group for U.S. federal income tax purposes.

To the extent that the foreign tax credits claimed by Branch are denied, Branch should be entitled to a deduction for the U.K. taxes paid by the Trust under section 162 or section 164. Further, to the extent that credits or deductions for the U.K. taxes paid by the Trust are denied, then the corresponding income should be eliminated for U.S. federal income tax purposes.

II. Adjustments for Fee Income and Interest Expense

As stated above, Branch owed Barclays a monthly interest amount pursuant to the terms of the secured loan based on a floating rate tied to 1-month LIBOR less a fixed amount due from Barclays. Based on the 1-month LIBOR rates in effect during 2007, Branch's floating rate interest obligation (\$20,578,708) was reduced by the fixed amount due from Barclays

(\$14,315,912). Branch, therefore, made net payments to Barclays in the amount of \$6,262,796 and deducted this amount as interest expense.¹

By making two separate adjustments to Branch's taxable income, the Notice of Deficiency effectively disallowed an interest expense deduction for Branch's \$20,578,708 floating rate interest expense without factoring in a reduction for the fixed amount due from Barclays. First, the Notice of Deficiency increased taxable income by \$14,315,912 and incorrectly characterized this amount as "fee income" that was "not properly reported." This \$14,315,912 represents the fixed amount by which Branch's floating rate interest obligation was reduced under the terms of the secured loan. The total fixed amount due from Barclays is merely part of the formula by which Branch's total interest obligation was calculated and reported on its tax return. Second, the Notice of Deficiency denied Branch's interest expense deduction in the amount of \$6,262,796 for the net interest payments actually made to Barclays. The Notice of Deficiency also denied Branch's interest expense deduction of \$4,759,846 for interest expense related to the termination of the Barclays Financing.

Based on the relevant facts and circumstances, Branch should be entitled to exclude the entire adjustment of \$25,338,554 from income because Branch's interest obligation represents interest on genuine indebtedness and is deductible under section 163. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

Alternatively, to the extent that a deduction for the \$25,338,554 in interest expense is denied or the foreign tax credits are denied, \$14,315,912 should be excluded from income.

In addition, the Notice of Deficiency's adjustments for "fee income" and interest expense were based on a cash method of reporting. Branch, however, was an accrual method taxpayer. If the Notice of Deficiency's adjustments are deemed to be correct, Branch is nevertheless entitled to a refund to the extent that the adjustments exceed the actual income and expenses accrued and reported by Branch as a result of the Barclays Financing.

III. Disallowance of Deductions for Transaction Costs

Based on the relevant facts and circumstances, the deductions taken by Branch for transaction costs paid with respect to the Barclays Financing cannot be disregarded because the financing transaction is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent such doctrines are applicable.

¹ The amounts of \$20,578,708 for Branch's floating rate interest obligation, \$14,315,912 for the fixed amount owed by Barclays, \$6,262,796 for Branch's net payments, and \$4,759,846 for interest expense related to termination of the Barclays Financing are from the Notice of Deficiency, which does not reflect the accrued amounts in Branch's tax reporting.

IV. Reclassification of Foreign Source Income

Foreign source income in the amount of \$109,370,968 cannot be reclassified as domestic source income because Branch properly reported this income as foreign source income in accordance with Article 24(2)(a) of the Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, U.S.-U.K., July 24, 2001. Moreover, the Barclays Financing is not a sham and should be respected under the economic substance doctrine and similar doctrines, to the extent applicable.

V. Penalties

Branch is not subject to a section 6662(a) penalty for substantial understatement of income tax or for negligence or disregard of rules or regulations because there is substantial authority to sustain Branch's position, including relevant case law and the plain meaning of the applicable Code provisions and regulations thereunder, and Branch can otherwise demonstrate reasonable cause under section 6664.

Claim for Refund

Branch, therefore, seeks a refund in the amount of \$36,255,749 for taxes paid, \$7,251,149.80 for penalties paid, and \$5,825,960.06 for deficiency interest paid plus statutory interest on the amount to be refunded, or such greater amount as is legally refundable. In addition, pursuant to the provisions of Revenue Procedure 2000-26, 2000-1 C.B. 1257, Branch requests that the IRS apply the net interest rate of zero pursuant to section 6621(d) to the tax years ending December 31, 2002, December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and June 15, 2007, as well as all other tax years that are open for such purposes on March 11, 2010.

Request for Expedited Denial Pursuant to IR 1600

As explained above, this refund claim for the 2007 Tax Year is based solely on contested income tax issues considered in previously examined returns. Therefore, pursuant to IR 1600 (Apr. 26, 1976) and the agreement between BB&T and the IRS, Branch now requests that the IRS immediately reject this claim for refund and promptly issue a notice of claim disallowance.