

Letter of Findings: 02-20160351
Corporate Income Tax
For the Years 2011, 2012, and 2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Pharmacy Benefit Management Provider was unable to establish that it did not earn Indiana source income by arranging for the purchase and subsequent sale of pharmaceutical drugs in transactions with Indiana customers; therefore, Provider had an apparent right, title, and interest in the pharmaceuticals; as a result, Provider was required to include receipts earned from the Indiana transactions in both the sales factor numerator and denominator and to pay Indiana income tax on income sourced to Indiana.

ISSUE

I. Corporate Income Tax - Prescription Drug Sales.

Authority: IC § 6-3-2-2(e); IC § 6-3-2-2(f); IC § 6-3-2-2(l); IC § 6-3-6-10(a); IC § 6-3-6-11; IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Treas. Reg. § 1.471-1; [45 IAC 2.2-5-8\(c\)](#); [45 IAC 3.1-1-50](#); [45 IAC 3.1-1-51](#); [45 IAC 3.1-1-52](#).

Taxpayer argues that the Department erred when it concluded that Taxpayer earned Indiana source income by selling Indiana customers prescription medicine.

STATEMENT OF FACTS

Taxpayer is an out-of-state "pharmacy benefit management provider" for various health insurers, union-sponsored health benefit plans, workers' compensation plans, and government health programs.

Taxpayer contracts with insurance companies to provide the plans' beneficiaries access to discounted prescription medicine. Taxpayer contracts with retail pharmacies to allow the policy beneficiaries to obtain the medicine from the retail pharmacies. Taxpayer also has contractual relationships with the drug manufacturers.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and income tax returns for the 2011, 2012 and 2013 tax years. The Department's audit concluded that Taxpayer earned income by selling prescription medicine to Indiana customers and that this income was subject to Indiana's corporate income tax. As a result, the audit assessed additional corporate income tax.

Taxpayer disagreed on the ground that it was not selling prescription medicine to Indiana customers and that its income was entirely attributable to services performed outside the state. Taxpayer submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Corporate Income Tax - Prescription Drug Sales.

DISCUSSION

The issue is whether Taxpayer is able to establish that it did not earn income includable in the numerator of the Indiana sales factor for Indiana income tax apportionment purposes when facilitated the sale of prescription drugs to Indiana customers.

The audit found that Taxpayer earned money from the "delivery of the prescription drugs . . ." to Indiana customers. Quoting Taxpayer's SEC filings, Taxpayer earned money "primarily from the delivery of the prescription drugs, through contracted network of retail pharmacies, home delivery, and specialty services and [Emerging Market] services." Taxpayer argues that it does not sell prescription medicine but that it is a "service provider" for which the costs of performing those services are incurred "outside of Indiana."

For the years at issue, Taxpayer filed Indiana corporate income tax returns, reported zero sales in the numerator of the apportionment factor, reported its total gross receipts in the denominator of the sales, and reported "zero" income attributable to Indiana. As a result, Taxpayer claimed a full refund of Indiana "Economic Development for a Growing Economy" (EDGE) credits.

A. Audit Results.

The audit described Taxpayer as a "pharmacy benefit management provider" in the business of providing "access to medicines at lower costs . . ." The audit found that Taxpayer did so by entering into contracts with health insurance providers and - separately - by entering into contracts with retail pharmacies as well as prescription drug manufacturers.

The audit found that Taxpayer's primary "revenue stream" was attributable to buying, selling, and delivering prescription drugs in transactions which occurred within the state. According to the audit, Taxpayer bought drugs at one price and then resold those drugs at a higher price to Indiana customers. As described in the audit report in part:

[Taxpayer's] retail sales of prescription drugs result from two types of contractual arrangements. [Taxpayer] contract[s] with various insurance companies to procure pharmaceutical drugs and other products for the insurance company's customers. Then, the insurance company pays [Taxpayer] a certain contract rate for each product provided to the insurance company customers. [Taxpayer] also contract[s] with a network of retail stores for the retail stores to provide the products to the insurance company customers, and [Taxpayer] pay[s] the retail stores a specific amount for each of the products provided to the insurance company customers. The contractually agreed amounts that [Taxpayer] pay[s] the retail stores for the products provided to the insurance company's customers are not the same contractually agreed amounts that [Taxpayer] receive[s] from the insurance company for the products given to the insurance company's customers.

The audit concluded that Taxpayer was not simply being reimbursed for its costs but was earning money by buying drugs at one price and then reselling those same drugs at a higher price. The audit found that approximately 99 percent of Taxpayer's revenue was derived from, buying, selling, and delivering drugs. As explained in the audit report:

The Taxpayer's revenue streams come from:

1. Claim revenue from managing prescription benefit plans. Revenues are generated from the delivery of prescription drugs through contracted network of retail pharmacies, home delivery and specialty pharmacy services and emerging market services, which the taxpayer's SEC filings disclose this revenue from delivery of the drugs as approximately 98-99[percent] of its revenues for the audit years[.]
2. Collecting members' co-pays.
3. Dispensing fees and rebates from drug manufacturers and wholesalers.

The transaction[s] with the independent pharmacy [are] described as follows:

1. A customer will present an [Taxpayer] ID card to the pharmacist when ordering prescription drug in Indiana.
2. The pharmacist will contact [Taxpayer] using a computer in the retail pharmacy. The [Taxpayer] computer is located outside the state.
3. [Taxpayer] will pay the pharmacy the pre-arranged price for the drug dispensed per the contracts negotiated with the member pharmacy.
4. [Taxpayer] will seek payment from the insurance company for the drug at the prearranged price for the drug per the contracts negotiated with the insurance company.
5. [Taxpayer] will receive an administration fee at the pre-arrange[d] contract price for the services per the contracts negotiated with the insurance company, approximately 2[percent], for every prescription they process. This administrative fee is in addition to the amount received for the drug from the insurance company discussed in part 4 above.

After reviewing the parties' agreements, the audit found that Taxpayer:

[D]id not include retail drug sales to members of pharmacy benefit plans from independent Indiana pharmacies in the Indiana sales factor numerator. The Taxpayer excluded these sales from the retail drug independent pharmacies in the Indiana sales numerator while reporting such sales in the sales factor denominator.

The audit determined that Taxpayer should have included money received from the sale of drugs at Indiana pharmacies in both the numerator and denominator of the Taxpayer's "sales factor" for two reasons:

Taxpayer did have a right, title and interest in the drug sales through the contracts with pharmacies to sell prescription drugs. If the Taxpayer can receive more for the drug from the insurance company than it pays for the drug from the retail pharmacy, it means the Taxpayer has enough right, title, and interest in the drug to "markup" what it is selling. Therefore, the [T]axpayer has the right, title and interest to make a profit on the sale of the drug itself. They enter into contractual agreements for this right where they are making approximately 98-99[percent] of their revenue from prescription drug sales.

. . . .

These gross receipts from prescription drug sales are shown on the Taxpayer's federal return as gross receipts on line 1 of the federal return and the drug purchases from the pharmacies are shown as cost of goods sold. Since they are apportioning federal income, the sales from line one must be used in apportioning income.

The audit found that, under IC § 6-3-2-2(e), money from sales of the pharmaceuticals "in this state" was properly sourced to Indiana and was properly included in *both* the numerator and denominator of the sales factor. The statute provides:

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer *in this state* during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property.

(Emphasis added).

As authority for requiring Taxpayer to include receipts from drug sales "to this state" in the sales factor numerator, the audit report also cited to [45 IAC 3.1-1-52](#) which provides in relevant part:

The numerator of the sales factor generally includes gross receipts from sales attributable to this state, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

[45 IAC 3.1-1-52](#) requires that the sales factor include gross receipts from the sale of tangible personal property including any receipts directly or indirectly associated with the sale of that property regardless of the seller's location.

As authority for requiring to include receipts from drug sales in the sales factor denominator, the audit report also cited to [45 IAC 3.1-1-51](#) which states in relevant part:

The denominator of the sales factor includes all gross receipts from the taxpayer's sales, except as noted in Regulation 6-3-2-2(l)(010) []. The denominator shall not include sales made between members of an affiliated group filing consolidated returns under IC § 6-3-4-14.

Although finding that Taxpayer did not have its own Indiana retail location from which it sold pharmaceuticals, Taxpayer entered into contracts with both insurance companies and retail pharmacies for purchases and sales of drugs which took place in Indiana. As explained in the audit report:

Taxpayer makes a profit on the sale of the prescription and is the seller of the prescription drugs. Taxpayer, thus, has tangible personal property sales in Indiana. The Taxpayer cannot "subcontract" away a substantial

nexus in which it subcontracts with a subsidiary, the pharmacies, and insurance companies for the delivery and sale of drugs to customers in Indiana.

After arriving at this conclusion, the audit proposed an adjustment to account for retail sales of drugs to Indiana customers. In order to properly calculate this adjustment, the Department requested that Taxpayer provide information detailing the retail and mail order sales along with information on sales rebates. Taxpayer refused the request on the ground that it had no Indiana retail sales, all of its income was attributable to services performed outside Indiana, and that the requested information was irrelevant and of no concern to the Department. However, Taxpayer did not provide a "cost of performance" analysis nor did it explain how and where it was reporting those costs.

In the face of Taxpayer's refusal to provide the Department's audit the requested financial information, the audit calculated an assessment "on the assumption that 2[percent] of [Taxpayer's] prescription drug sales [were] located in Indiana" and on the assumption that Taxpayer had sales in all fifty states. As authority for doing so, the audit cited to IC § 6-8.1-5-1(b) which provides in relevant part:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall make* a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department.

(*Emphasis added*).

In addition, the audit cited to IC § 6-3-2-2(l) as further justification for its decision that Taxpayer was required to include sales resulting from the Indiana sale of prescription drugs in order to more "fairly represents the [T]axpayer's" Indiana income. In part, that statute provides:

If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) for a taxable year beginning before January 1, 2011, the exclusion of any one (1) or more of the factors, except the sales factor;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

In effect, the audit concluded that including money received from its Indiana prescription sales in both the numerator and denominator of the sales factor was necessary in order to "effectuate an equitable allocation and apportionment of [T]axpayer's [Indiana] income."

B. Taxpayer's Response.

Taxpayer disagrees with the decision in which the Department concluded that Taxpayer was earning money from Indiana sales of "tangible personal property" (prescription drugs).

Taxpayer cites to IC § 6-3-2-2(f) as authority for its position that the sales income at issue should have been sourced to a location outside Indiana. The statute provides:

Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

- (1) the income-producing activity is performed in this state; or
- (2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

Taxpayer explains its position:

Thus, as [Taxpayer] is a service provider, the Department improperly determined that a portion of the receipts from [its customers] should be included in the numerator of the sales factor as receipts from the sale of tangible personal property. Instead, as the greater proportion of the income-producing activities, based on

costs of performance, occur outside of Indiana, no portion of the receipts from the Retail Business should be included in the numerator of the sales factor.

(*Emphasis added*).

However, it is appropriate to repeat here that Taxpayer did not document or explain the manner in which it calculated its "cost of performance" nor did it establish how and where those costs were reported.

Taxpayer makes a secondary argument. According to Taxpayer, the Department's assessment "violates both the Commerce Clause and the Due Process Clause of the United States Constitution" by assessing tax on transactions and activities which are unrelated to any Indiana activity.

Taxpayer contends that the Department's "adjustments violate both the Equal Protection Clause and the Due Process Clause of the United States Constitution and the Indiana Constitution" on the ground that the Department is "discriminating" against Taxpayer. Taxpayer asserts that the Department is discriminating against Taxpayer "by treating it differently than other similarly-situated Indiana taxpayers" and thereby depriving Taxpayer "of property without equal protection and due process of law."

C. Hearing Analysis.

Taxpayer argues that the assessment of tax was wrong because the income at issue was attributable wholly to the provision of services, that the services were performed by its employees located outside Indiana, and that based on the "cost-of-performance" rule, the income is properly attributed to locations other than Indiana.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the original audit, are entitled to deference.

Taxpayer argues that its involvement in the "retail sales" consists solely of the provision of services, that the services are performed outside Indiana, and that it has no ownership interest in the products provided to the insurance company customers.

Taxpayer further asserts that these receipts—in which it has no interest because it has no interest in the goods—are exclusively service receipts and are included in only the sales factor denominator because the services are performed outside of Indiana pursuant to IC § 6-3-2-2(f).

Taxpayer details its business activity in its 2012 SEC 10-K form. Taxpayer explains in the "Company Overview" that its business consists in part in the provision of the following services:

- Distribution of pharmaceuticals and medical supplies to providers and clinics.
- Healthcare account administration and implementation of consumer-directed healthcare solutions.

Taxpayer SEC report explains:

Our revenues are generated primarily from the delivery of prescription drugs through our contracted network of retail pharmacies, home delivery and specialty pharmacy services and [redacted] services. Revenues from the delivery of prescription drugs to our members represented 99.4[percent] of revenues in 2011. Revenues from services, such as the fees associated with the administration of retail pharmacy networks contracted by certain clients, medication counseling services, and certain specialty distribution services, comprised the

remainder of our revenues.

Prescription drugs are dispensed to members of the health plans we serve primarily through networks of retail pharmacies that are under non-exclusive contracts with us and through the home delivery fulfillment pharmacies, specialty drug pharmacies and fertility pharmacies we operated as of [redacted]. More than [redacted] retail pharmacies, which represent over 95[percent] of all United States retail pharmacies, participated in one or more of our networks at [redacted]. The top ten retail pharmacy chains represent approximately 50[percent] of the total number of stores in our largest network.

Taxpayer also described its business model in a 2016 prospectus 424B5 disclosure form. In that prospectus Taxpayer stated:

Our revenues are generated primarily from the delivery of prescription drugs through our contracted network of retail pharmacies, our home delivery pharmacies, and our specialty pharmacies. Revenues from the delivery prescription drugs to our members represented 98.0[percent] of our revenues in 2015, 98.4[percent] in 2014, and 98.8[percent] in 2013.

. . .

Prescription drugs are dispensed to members of the health plans we serve primarily through networks of retail pharmacies under non-exclusive contracts with us . . . More than 70,000 retail pharmacies, which represent over 97[percent] of all United States retail pharmacies, participated in one or more of our networks as of December 31, 2015.

Taxpayer is mistaken in its reliance on IC § 6-3-2-2(f) on the ground that Taxpayer's income is wholly attributable to providing services. For the receipts to be receipts wholly attributable to providing a service, Taxpayer would be a simple conduit collecting from the insurance company the same amount that it pays the retail pharmacy stores for the drugs provided to the insurance company customers. That is not the case here. In this instance, Taxpayer's documents demonstrate that it has an apparent right to sell the prescription drugs at a mark-up and it reports a federal cost of goods sold on its tax returns. Moreover, if a taxpayer were a service provider with receipts and costs of goods for which it had no interest, that taxpayer would neither include such receipts as part of the taxpayer's business receipts nor use the receipts to calculate the apportionment factor—i.e., the receipts would be included in neither the numerator or denominator of the sales factor. In effect, Taxpayer wants to operate in the "best of both worlds." In that world, Taxpayer collects receipts for which it has no purported interest, but simultaneously claims that the sales receipts are business income reported in the denominator of the sales factor.

The Department's audit found that Taxpayer's "retail sales" result from two categories of contractual arrangements. Taxpayer contracts with various insurance companies to "procure" products for the insurance company's customers. Then, the insurance company pays Taxpayer a specified contract rate for each drug provided to the insurance company customers. Taxpayer also contracts with a network of retail pharmacy stores to provide the drugs to the insurance company customers. Under the agreement, Taxpayer pays the retail pharmacy stores a specific amount for each of the drugs provided to the insurance company customers. The contractually agreed amount Taxpayer pays to the retail pharmacy stores for drugs provided to the insurance company customers are not the same contractually agreed amounts that Taxpayer receives from the insurance company for the drugs provided to the insurance company's customers. Therefore, these contractual arrangements do not result in a simple dollar-for-dollar reimbursement in which Taxpayer has no interest in the amounts received from the retail pharmacy stores.

For illustrative purposes, Taxpayer contracts with a retail drug store and agrees that Taxpayer will pay the retail store \$50 for a prescription medicine provided to the insurance company customers. Taxpayer simultaneously contracts with the insurance company and agrees that the insurance company will pay Taxpayer \$60 for the prescription medicine provided to the insurance company customer. Therefore, Taxpayer's contractual arrangements result in prescription medicine being transferred to the customers and Taxpayer receiving a \$10 profit for each drug transaction.

Accordingly, these transactions result in Taxpayer earning a profit on the acquisition and transfer of the drugs. Taxpayer has an interest in the resulting receipts and, therefore, an interest in the drugs being transferred in retail transactions occurring in Indiana. Moreover, since these transactions are an "income-producing factor" in Taxpayer's business, the Internal Revenue Service requires Taxpayer to report these purchases as purchases of goods recorded as inventory when the transactions are an "income-producing factor." See Treas. Reg. § 1.471-1.

Taxpayer, in compliance with this regulation, recorded its purchases of the drugs from the retail stores as inventory on its federal income tax returns. Since these receipts were received by Taxpayer for an interest in tangible personal property transferred in Indiana, the receipts from these transactions would be sourced to Indiana for purposes of the sales factor numerator as provided in [45 IAC 3.1-1-50](#). The Department's adjustments to the sales factor followed this provision.

Although Taxpayer provided a certain amount of redacted and unredacted documentation during the course of the audit and administrative hearing, Taxpayer declined to provide documentation directly related to the drug pricing issue, its cost of performance study, or documentation establishing the methodology by which Taxpayer reported its income to the sourcing state. Therefore, this Letter of Findings takes note of Taxpayer's refusal to provide the Department with documents and information requested during the course of the audit and during the course of the administrative protest. IC § 6-3-6-10(a) provides:

A taxpayer subject to taxation under this article shall keep and preserve records and any other books or accounts as required by [IC 6-8.1-5-4](#). All the records shall be kept open for examination at any time by the department or its authorized agents. A taxpayer who violates this subsection or fails to comply with the request of the department pursuant to [IC 6-3-4-6](#) commits a Class A misdemeanor.

IC § 6-3-6-11 in part provides:

It is a Level 6 felony for a person to knowingly fail to permit the examination of any book, paper, account, record, or other data by the department or its authorized agents, as required by this article, to knowingly fail to permit the inspection or appraisal of any property by the department or its authorized agents, or to knowingly refuse to offer testimony or produce any record as required in this article.

The Department also takes note of Taxpayer's refusal to provide documentation requested pursuant to the administrative protest process. The Department issued an administrative subpoena requesting income tax returns, its sales apportionment, unredacted vendor contracts, and a documented explanation of the basis on which it claimed a deductions for "cost of goods sold." Taxpayer declined to provide the information based on its "company policy" and its own determination that the requested documents were not relevant to the issues at hand. In this case, Taxpayer's recalcitrance in providing the requested documentation has made it difficult to conclude that Taxpayer has met its burden of establishing that the assessment was "wrong."

Taxpayer has failed to explain why it was justified in refusing to provide records requested during the audit or why it should not now be subject to the penalties provided under IC § 6-3-6-10(a) and or IC § 6-3-6-11.

Nonetheless, some two years after the audit was completed and in response to an administrative subpoena, Taxpayer provided a limited number of documents in response to the audit's original documentation request. The records - as explained above - are relevant as to the amount of money Taxpayer earned from purportedly buying and selling drugs and not to the question of whether Taxpayer's sales activities resulted in income taxable in this state.

In addition to unresolved issues stemming from Taxpayer's refusal to provide the documents at first requested and afterwards subpoenaed, Taxpayer has in an unrelated protest argued that it is entitled to a refund of sales tax on equipment it uses to sort, weigh, inspect packages and label prescription drugs. In support of its argument, Taxpayer cited to [45 IAC 2.2-5-8\(c\)](#) arguing that the property for which it sought the refund was "machinery, tools, and equipment . . . directly used in the production process." In its sales tax refund protest, Taxpayer argued that it acquired and distributed "bulk drugs" and that it operates an Indiana facility which constitutes "the last integral, essential step to transform [drugs] into a marketable product." Taxpayer's argument in that protest - that it operates "an [Indiana] automated pharmaceutical processing facility" - would seem to be at odds with its argument here that it is simply a service provider which incurs expenses entirely outside Indiana.

The Department acknowledges but declines to address in any fashion the multiple constitutional objections raised in Taxpayer's protest. An administrative hearing is not the appropriate venue in which to address such objections but must note that there is nothing on the face of the Department's decision to assess income tax which appears to rise to the level of a fundamental, constitutional concern.

Taxpayer asks that the Department conclude that the assessment should be entirely set aside on the ground that it has met its statutory burden of establishing that the assessment was wrong. Taxpayer asks that the Department set aside the detailed and thoughtful audit report, ignore the fact that Taxpayer has refused to provide all the subpoenaed documentation, and issue an administrative decision based upon what the Taxpayer has determined

is relevant and what is irrelevant.

Given the complexity of Taxpayer's business and contractual relationships with its many suppliers and vendors, the absence of documentation - requested and subpoenaed - which the Department deemed necessary to make its determination, and Taxpayer's baseless determination that it - and it alone - will decide what information is "relevant" and what is not "relevant" to these questions, the Department is unable to conclude that Taxpayer's position is correct. In addition, as noted above, Taxpayer has taken apparently inconsistent positions in a protest also filed with the Department. While Taxpayer here states that it has no possessory interest in the drugs and no financial stake in the sale of the drugs other than to recoup its distribution expenses, Taxpayer has elsewhere argues that it is entitled to sales tax refunds on equipment it uses to transform drugs into its "marketable product."

Given the elusiveness of the circumstances under which Taxpayer conducts its business, Taxpayer's protest of the Department's adjustments to the sales factor for the "retail sale" of drugs cannot be sustained. Taxpayer has not met its statutory burden of establishing that the Department's assessment was "wrong." IC § 6-8.1-5-1(b).

FINDING

Taxpayer's protest is respectfully denied.

December 28, 2018

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An [html](#) version of this document.