**DEPARTMENT OF STATE REVENUE**

02-20171267.LOF
02-20181190R.ODR

**Letter of Findings: 02-20171267**
**Final Order Denying Refund: 02-20181190R**
**Corporate Income Tax**
**For the Years 2013 and 2014**

**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 document.

## HOLDING

Out-of-State Corporations were required to exclude their parent company from their 2013 and 2014 Indiana consolidated returns because the parent company did not have adjusted gross income derived from sources within Indiana and therefore was not eligible to file the Indiana consolidated returns with Out-of-State Corporations. On the second "Throwback" rule issue, for apportionment purposes, the numerator of each member's sales factor was required to include their sales to the purchasers' states where each member - on a separate basis - was not taxable in those purchasers' states.

## ISSUES

### I. Corporate Income Tax - Imposition - Consolidated Filings and Apportionment.

**Authority**: 15 U.S.C. § 381; I.R.C. § 63; I.R.C. § 1504; IC § 6-3-1-3.5; IC § 6-3-1-11; IC § 6-3-1-15; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-4-14; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue,* 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc*., 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Hunt Corp. v. Department of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999); *Indiana Dep't of Revenue v. United Parcel Service, Inc.*, 969 N.E. 2d 596 (Ind. 2012); *Nw. States Portland Cement Co. v. State of Minn.,* 358 U.S. 450 (1959); *Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768 (1992); *Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue & Fin.*, 505 U.S. 71 (1992); *Indiana Dep't of State Revenue v. Kimberly-Clark Corp.*, 416 N.E.2d 1264 (Ind. 1981); *Wisconsin Dep't. of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214 (1992); *Univ. of Phoenix, Inc. v. Indiana Dep't of State Revenue*, 88 N.E.3d 805 (Ind. Tax Ct. 2017); 45 IAC 3.1-1-38; 45 IAC 3.1-1-111.

Taxpayers protest the exclusion of the parent company from the Indiana consolidated returns for the tax years 2013 and 2014.

### II. Corporate Income Tax - Apportionment (Sales) - Numerator - Throwback Sales.

**Authority**: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; IC § 6-8.1-5-4; 45 IAC 3.1-1-38; 45 IAC 3.1-1-53; 45 IAC 3.1-1-64; *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Sherwin-Williams Co. v. Indiana Dep't. of State Revenue*, 673 N.E.2d 849 (Ind. Tax Ct. 1996).

Taxpayers protest that the Department's adjustments - throwing sales Taxpayers made to their purchasers in other states back to Indiana - which increased the numerator of the sales factor of each member of their Indiana consolidated group.

## STATEMENT OF FACTS

Company M ("Parent"), Sub A, Sub B, and Sub M are out-of-state companies. Sub A, Sub B, and Sub M (*collectively*, "Taxpayers"; *individually*, "Taxpayer") have facilities in Indiana and have conducted business in Indiana since the late 1990s. Beginning in the late 1990s through 2012, each Taxpayer filed its own Indiana corporate income tax returns (IT-20 Forms); each Taxpayer individually reported and remitted its Indiana corporate income tax. On the other hand, Parent and its subsidiaries (other than Taxpayers) did not file any

Indiana income tax returns during those years. Subsequently after 2012, Taxpayers, Parent, and an additional six (6) affiliates - a total of ten (10) entities - elected to file their Indiana corporate income tax returns for the years 2013 and 2014 on a consolidated basis ("Consolidated Returns at Issue").

In late 2015, the Indiana Department of Revenue ("Department") audited the Consolidated Returns at Issue. Pursuant to the audit, the Department determined that Parent and the six affiliates were not eligible to file Indiana corporate income tax returns on the consolidated basis. The audit thus excluded Parent and the six affiliates from the Consolidated Returns at Issue. The audit further adjusted Taxpayers' apportionment factors recalculating Taxpayers' Indiana income tax liability. As a result, Taxpayers, together as a consolidated group, were assessed additional Indiana corporate income tax for 2013 and 2014.

In response to the audit adjustments, Taxpayers amended their 2013 consolidated return in late 2017, removing the six affiliates from the consolidated group. That amended return consisted of Taxpayers and Parent only in the consolidated group. Taxpayers requested a refund pursuant to their amended return. The Department reviewed the amended return and denied that request.

Taxpayers timely protested a portion of the audit assessments and the refund denial. A hearing was held. This final determination ensues. Additional facts will be provided as necessary.

**I. Corporate Income Tax - Imposition - Consolidated Filings and Apportionment.**

**DISCUSSION**

After reviewing the Consolidated Returns at Issue, the amended 2013 return, and the relevant business records, the Department determined that only Taxpayers (Subs A, B, and M) qualified to file, reporting their Indiana income tax, on a consolidated basis because only Taxpayers had adjusted gross income (or loss) derived from sources within Indiana - a taxable nexus in Indiana - for the 2013 and 2014 years. The Department thus removed Parent and its six (6) subsidiaries from the consolidated group, resulting in additional assessments and a refund denial.

Taxpayers "agreed to exclude . . . six (6) affiliates." Taxpayers, however, contended that the Department erroneously excluded Parent from Taxpayers' consolidated group because Parent had taxable nexus in Indiana and had adjusted gross income derived from sources within Indiana. As such, Taxpayers subsequently amended their 2013 amended return, including Parent in their consolidated filing.

Accordingly, the issue is, for Indiana income tax purposes, whether the Department erroneously excluded Parent, an out-of-state manufacturer, from Taxpayers' consolidated Indiana corporate income tax returns pursuant to Indiana law.

**A. The Applicable Law.**

In addition to the audit assessments, the refund denial regarding the 2013 amended return in this case stemmed from the audit's proposed assessments concerning the Consolidated Returns at Issue. Thus, as a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue,* 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc*., 963 N.E.2d 463, 466 (Ind. 2012). "Each assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment 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). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

Indiana imposes a tax on the adjusted gross income of every corporation that has adjusted gross income derived from sources within Indiana. IC § 6-3-2-1(b); IC § 6-3-2-2. To compute the income subject to Indiana corporate income tax, Indiana adopts a multistep process to calculate a corporation's taxable Indiana adjusted gross income. *Caterpillar, Inc.*, 15 N.E.3d at 581. Indiana generally follows the tax principles established in the federal law. IC § 6-3-1-11. Indiana statutes refer to the Internal Revenue Code to efficiently compute what is considered the taxpayer's Indiana income tax. IC § 6-3-1-3.5(b) provides the starting point to determine a corporation's

taxable income, stating that the term "adjusted gross income" shall mean, "In the case of corporations the same as 'taxable income' (as defined in Section 63 of the Internal Revenue Code) adjusted as follows . . . ." In determining the taxpayer's Indiana adjusted gross income, Indiana first refers to I.R.C. § 63 as the beginning point. In other words, when used "[i]n the case of corporations," the term "'adjusted gross income' shall mean the same as 'taxable income' (as defined in Section 63 of the Internal Revenue Code)" with certain modifications. IC § 6-3-1-3.5(b).

IC § 6-3-2-2 (applicable during 2013 and 2014), in relevant part, further provides that:

> (a) With regard to corporations . . . , "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:
> (1) income from real or tangible personal property located in this state;
> (2) **income from doing business in this state**;
> (3) income from a trade or profession conducted in this state;
> (4) compensation for labor or services rendered within this state; and
> (5) **income from** stocks, bonds, **notes**, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property **to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section**.
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> . . . In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. **In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana** . . . .
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> (b) . . . if business income of a corporation . . . is derived from sources within the state of Indiana and from sources without the state of Indiana, the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by . . .
>
> (5) For all taxable years beginning after December 31, 2010, the sales factor.
> . . .
>
> (e) 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. . . . Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter . . . .
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> (f) **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** . . . .
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> (**Emphasis added**).

Thus, for Indiana income tax purposes, a "taxpayer" is "any person or any corporation subject to taxation under this article." IC § 6-3-1-15. In this particular case, a corporation that is subject to tax under IC 6-3 - i.e., that has taxable nexus in Indiana - is the corporation that has "adjusted gross income from sources within Indiana." IC § 6-3-2-1(b); IC § 6-3-4-1(3); *See Hunt Corp. v. Department of State Revenue*, 709 N.E.2d 766, 771 (Ind. Tax Ct. 1999)(explaining that "[i]n order to determine what income is attributable to Indiana, it must be first determined whether the income sought to be attributed is business or non-business income" and applying rules of apportionment or allocation accordingly); *see also Indiana Dep't of Revenue v. United Parcel Service, Inc.*, 969 N.E. 2d 596, 599-603 (Ind. 2012). Therefore, for the corporation to have "adjusted gross income from sources within Indiana," it must have taxable income including either Indiana apportionment factors resulting in deemed Indiana business income (or losses) or nonbusiness income (or losses) that is allocated to Indiana. IC § 6-3-2-2; *Hunt Corp.*, 709 N.E.2d at 781.

45 IAC 3.1-1-38 further illustrates:

> Doing Business. **For apportionment purposes**, **a taxpayer is "doing business" in a state if it operates a business enterprise or activity in such state** including, but not limited to:
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> (1) Maintenance of an office or other place of business in the state
> (2) Maintenance of an inventory of merchandise or material for sale distribution, or manufacture, or consigned goods
> (3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution
> (4) Rendering services to customers in the state
> (5) Ownership, rental or operation of a business or of property (real or personal) in the state
> (6) Acceptance of orders in the state
> (7) **Any other act in such state which exceeds the mere solicitation of orders so as to give the state nexus under [Public Law 86-272] to tax its net income**.
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> As stated in Regulation 6-3-2-2(b)(010) *[45 IAC 3.1-1-37]*, corporations doing business in Indiana as well as other states are subject to the allocation and apportionment provisions of IC 6-3-2-2(b)-(n).
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> (**Emphasis added**).

Public Law 86-272, ("P.L. 86-272") (codified at 15 U.S.C. § 381) establishes minimum standards for a state to impose "a net income tax on the income derived within such State." Specifically, 15 U.S.C. § 381(a) states, in part:

> No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:
> (1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and
> (2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

15 U.S.C. § 381(c) further states:

> For purposes of subsection (a) of this section, a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance, of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, of tangible personal property.

Accordingly, the assumption is, in every transaction, at least one state has the authority to impose tax on income derived from the sale of tangible personal property. *See* generally *Nw. States Portland Cement Co. v. State of Minn.,* 358 U.S. 450 (1959); *Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768 (1992); *Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue & Fin.*, 505 U.S. 71 (1992). A state could impose tax on a taxpayer if its activity within the state exceeds "solicitation of orders."

In *Indiana Dep't of State Revenue v. Kimberly-Clark Corp.*, 416 N.E.2d 1264 (Ind. 1981), the court stated that "each case must be judged upon its own merits, with particular emphasis placed upon the totality of a corporation's activities within a state." *Id*. at 1268. The Kimberly-Clark court found that the nonresident taxpayer did not exceed solicitation of orders for sales in Indiana because it only employed several salesmen who lived in Indiana to perform activities such as, checking inventories, checking shelf facings, and explaining products. *Id.* at 1266. The court explained that solicitation of orders for sales includes "sundry activities so long as those activities (are) closely related to the eventual sale of a product." *Id*. (Internal citation omitted). The court concluded that the taxpayer's activities in Indiana were "inextricably related to solicitation" or as "acts of courtesy," and, therefore, the taxpayer was not taxable in Indiana. *Id*.

The U.S. Supreme Court refined the "mere solicitation" standard in *Wisconsin Dep't. of Revenue v. William Wrigley, Jr.*, *Co.*, 505 U.S. 214 (1992). In *Wrigley*, the taxpayer, a manufacturer of chewing gum, claimed that P.L. 86-272 prohibits Wisconsin from taxing its income because (1) it did not have any office (or real estate) in Wisconsin and (2) its business activities in Wisconsin were within the scope of solicitation of orders and were *de minimis*. *Id*. at 235. The Court disagreed and, in relevant part, stated:

> We proceed, therefore, to describe what we think the proper standard to be. Once it is acknowledged, as we have concluded it must be, that "solicitation of orders" covers more than what is strictly *essential* to making requests for purchases, the next (and perhaps the only other) clear line is the one between those activities that are *entirely ancillary* to requests for purchases–those that serve no independent business function apart from their connection to the soliciting of orders–and those activities that the company would have reason to engage in anyway but chooses to allocate to its in-state sales force. Providing a car and a stock of free samples to salesmen is part of the "solicitation of orders," because the only reason to do it is to facilitate requests for purchases. Contrariwise, employing salesmen to repair or service the company's products is not part of the "solicitation of orders," since there is good reason to get that done whether or not the company has a sales force. Repair and servicing may help to *increase* purchases; but it is not ancillary to *requesting purchases*, and cannot be converted into "solicitation" by merely being assigned to salesmen.
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> *Id*. at 228-29. (*Emphasis in original*)(Internal citation omitted).

Ruling in favor of Wisconsin, the Court thus held that the taxpayer in *Wrigley* was subject to Wisconsin's net income tax because its business activities in Wisconsin exceeded P.L. 86-272's protection. *Id.* at 235.

Finally, for Indiana corporate income tax purposes, if a corporation and also its affiliates all have adjusted gross income derived from sources within Indiana, they may consent to report their apportionable income as a group on a consolidated basis pursuant to IC § 6-3-4-14(a), which in relevant part provides "[a]n affiliated group of corporations shall have the privilege of making a consolidated return with respect to the taxes imposed by IC 6-3." Indiana adopts the definition of "affiliated group" outlined in I.R.C. § 1504 with one condition that the entities (namely, members of the affiliated group) must have "adjusted gross income derived from sources within Indiana" under IC § 6-3-2-2. IC § 6-3-4-14(b). "'Adjusted Gross Income derived from sources within the state' means either income or losses derived from activities within the state." 45 IAC 3.1-1-111. In other words, the law is clear: ***each entity must have*** - a taxable nexus in Indiana - "***adjusted gross income derived from sources within Indiana***." IC § 6-3-4-14(a); 45 IAC 3.1-1-111. (***Emphasis added***).

**B. The Analysis.**

For the tax years 2013 and 2014, Taxpayers in this case filed their Indiana income tax returns, which included Parent in their consolidated group. The Department's audit, however, found that Parent had no adjusted gross income derived from sources within Indiana pursuant to Indiana law. The audit noted further that Parent (through its three divisions) does not have payroll or property in Indiana and merely made sales of goods, which were picked up in Ohio or delivered to Indiana by third-party common carriers. These "destination sales" did not exceed solicitation of sales under P.L. 86-272. The audit concluded that Parent was protected under P.L. 86-272. Based on those findings, the audit thus determined that Parent did not have adjusted gross income derived from sources within Indiana and was not subject to income tax in Indiana. As a result, the Department proceeded to remove Parent from Taxpayers' consolidated group because Parent was not eligible to consent to file 2013 and 2014 consolidated returns with Taxpayers in Indiana. The audit report explained, in part:

> This audit found that [Parent] **does not have adjusted gross income derived from sources within Indiana**. [Parent] reports Indiana-destination sales of its divisions . . . . None of these divisions has a taxable nexus in Indiana. These divisions do not have a *substantial nexus or a physical presence* in Indiana. These divisions do not have employees in Indiana. Under Indiana Code [§] 6-3-2-2 and P.L. 86-272[,] Indiana may not tax the income of [Parent] based upon sales of tangible personal property when the only activities in the state may be solicitation of these sales. (**Emphasis added**)(*Emphasis in original*).

The Department's audit further determined that Taxpayer's 2013 and 2014 consolidated Indiana income tax returns as filed, which included Parent in the group, did not fairly reflect their Indiana-source income. The Department's audit specifically noted that "[i]nclusion of the losses of Parent in the Indiana consolidated returns for 2013 and 2014 results in a 50[percent] reduction in federal taxable income and a 44[percent] reduction in the apportionment factor."

Throughout the protest process, Taxpayers argued that the Department's audit erred in excluding Parent from their consolidated corporate income tax returns. In addition, Taxpayers asserted that the Department's audit improperly applied an "alternative apportionment" methodology because their 2013 and 2014 consolidated returns, including Parent, fairly represented their business activities in Indiana. Taxpayers claimed, in part:

> Indiana utilizes a two-step approach to determine whether an entity derives "adjusted gross income derived from sources within Indiana" for purposes of joining its affiliates in a consolidated Indiana return. The two-step process requires that the entity establish nexus in Indiana and the entity must reflect an apportionment factor in the state after consolidated eliminations which yields deemed business income for Indiana purposes . . . .

Taxpayers further asserted that:

> [Parent had] adjusted gross income derived from sources within Indiana from business activities including management and administrative services provided to [Sub A] and [Sub B] in Indiana and interest income received from loans made to [Sub A] and [Sub B] who use their Indiana property as collateral for the loans. Neither activity is protected by P.L. 86-272; thus [Parent's] business activities in the state created nexus and constitute doing business in the state . . . . [Parent] also had sales of tangible personal property in the state. Since P.L. 86-272 protections were exceeded by conducting unprotected activities in the state, no sales to the state would be protected by the federal law.

Relying on the above-mentioned interpretation, Taxpayers argued that Parent met the two-step requirement because Parent had "business activities" that exceeded P.L. 86-272's protection and had "apportionment factors." In other words, Taxpayers contended that Parent's employees travelled to Indiana, performing various "services" to Sub A and Sub B in Indiana, which exceeded P.L. 86-272's protection; in turn, Parent received "interest income" and "management fees" from Sub A and Sub B through various intercompany transactions - together with receipts from sales of tangible personal property which were delivered to Indiana by third party carriers - were adjusted gross income derived from sources within Indiana. Therefore, Taxpayers maintained that Parent qualified to consent to file the Indiana consolidated returns with Taxpayers.

Upon review, however, Taxpayers' above derivative interpretation is misplaced. As mentioned earlier, to qualify to file Indiana income tax returns on a consolidated basis, a corporation must "have adjusted gross income derived from sources within the State of Indiana." IC § 6-3-4-14(b). "'Adjusted Gross Income derived from sources within the state' means either income or losses derived from activities within the state." 45 IAC 3.1-1-111. Thus, the plain language of IC § 6-3-4-14(b) and 45 IAC 3.1-1-111 clearly requires each of corporations must have "income or losses derived from activities within the state." Taxpayers mistakenly argue that Indiana utilizes "a two-step approach to determine whether an entity derives 'adjusted gross income derived from sources within Indiana' for purposes of joining its affiliates in a consolidated Indiana return." To be included in the consolidated returns of Taxpayers, Parent *itself* must have adjusted gross income derived from sources - activities which generate income or losses - within Indiana.

The issue thus is whether Parent itself had either income or losses derived from activities within Indiana for the tax years 2013 and 2014. First, in this case, there is no dispute that Parent (through its divisions) had "sales of tangible personal property" where the tangible personal property was picked up in Ohio or delivered to Indiana by various third-party common carriers. None of Parent's divisions had employees in Indiana; and thus, Parent did not have "substantial nexus or physical presence in Indiana." The audit thus correctly noted that Parent's income or losses from those destination sales were not adjusted gross income derived from sources within Indiana pursuant to P.L. 86-272.

Nonetheless, Taxpayers claimed that Parent had "adjusted gross income derived from sources within Indiana" based on two types of intercompany activities: (1) intercompany administrative and management services and (2) intercompany advances or intercompany loans. This decision addresses each as follows:

***1. Intercompany Administrative and Management Services.***

The Department determined that Parent did not have "adjusted gross income derived from sources within Indiana" by means of providing various intercompany administrative and management services including, but not limited to, "general management," "administration of payroll and benefits," "IT services," and "accounting and tax services" ("Services"). Specifically, the audit noted that Parent was paid or reimbursed - by means of "corporate allocations" without any markups - for expenses incurred when it provided the Services.

Taxpayers, to the contrary, contended that the intercompany administrative and management services performed by Parent's employees in Indiana exceed the protection of P.L. 86-272. As such, these intercompany activities - i.e., the Services Parent offered to Sub A and Sub B - supported that Parent qualified to file Indiana consolidated returns with Taxpayers because Parent was paid for these Services performed under the "Management Services Agreement[s]" ("Agreements").

Specifically, Taxpayers contended that both Sub A and Sub B entered into the Agreements with Parent since January 1, 2000. Parent agreed to provide Services; in return, Sub A and Sub B shall pay to Parent "annually an amount equal to [Parent's] cost of providing such Services . . . ." Taxpayers asserted that "[t]o satisfy its contract for corporate services with [Sub A] and [Sub B], [Parent's] personnel regularly entered Indiana to complete its service obligations, especially with regards to information technology and corporate risk services." Taxpayers argued that Parent's employees performed the Services and were activities that exceed P.L. 86-272's protection. Taxpayers thus argued that Parent had adjusted gross income - management fees - derived from sources within Indiana by means of providing Services in Indiana. To support their protest, in addition to the Agreements, Taxpayers offered sample copies of expense reports from Parent's employees, and a summary concerning each employee's Indiana visits during 2013 and 2014.

Upon review, however, Taxpayers are mistaken. As mentioned above, to qualify and consent to file Indiana returns as a consolidated group, each corporation of the affiliated group must have "adjusted gross income derived from sources within Indiana" under IC § 6-3-2-2. IC § 6-3-4-14(b). "'Adjusted Gross Income derived from sources within the state' means either income or losses derived from activities within the state." 45 IAC 3.1-1-111. Taxpayers documented that various employees of Parent spent some time - 51 days in 2013 and 44 days in 2014 - attending a board meeting, offering IT support and training, and facilitating audits in Indiana. However, Taxpayers' supporting documentation demonstrated that Sub A and Sub B "shall pay [Parent] annually an amount equal to [Parent's] cost of providing such Services" and the payments were reimbursements to Parent for costs incurred. Thus, Parent did not have adjusted gross income derived from sources within Indiana because Parent was reimbursed "annually an amount equal to [Parent's] cost of providing such Services." The audit report further explained, in part:

> [T]he corporate allocations charged by [Parent] allow [Sub A and Sub B] to bear a relative share of the corporate administrative expenses. The intercompany transactions are cleared through the *Allocations* accounts.
>
> The allocations of expenses incurred by [Parent] in Ohio and charged to Indiana operations to reimburse [Parent] do not constitute *sales* for the sales factor . . . . The reimbursement of these expenses without a mark-up is a reduction of expense for [Parent] and is not a gross income receipt. The allocations of these expenses of [Parent] were made to properly match the expense to the appropriate entity. To include the book entries used to facilitate these allocations as income for the sales factor would be a misrepresentation of their nature.
>
> [Parent] has included in its sales factor numerator and denominator these allocated reimbursement/expense items which are not income items on its federal income tax return. Mere cost reimbursement is not an income item for federal income tax purposes. Cost reimbursements are reported as reductions to the business expense.
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> (*Emphasis in original*).

Accordingly, Taxpayers' documentation, including the Agreements and their accounting records, failed to support their assertion that Parent had *income by providing Services*. In particular, the audit found that, for the tax years at issue, Sub A and Sub B "share[d] of the corporate administrative expenses," reimbursing Parent only for the "expenses without a mark-up" and thus Parent did not have any gross income receipts from those reimbursements. Because Parent did not have income, i.e., profits or gross receipts, attributable to its Services, the Department is not able to agree that Parent had adjusted gross income derived from sources within Indiana by providing its Services to Sub A and Sub B in Indiana. Taxpayers' reliance on the Sub A and Sub B's reimbursements paid to Parent for Services partly performed in Indiana is misplaced.

Even if, for the sake of argument, assuming that reimbursements Parent received was "income by providing the Services" and Parent's business has been providing the Services to its subsidiaries, the income attributable to the Services does not qualify as adjusted gross income derived from sources within Indiana because by providing the Services to Sub A and Sub B, Parent's sales of Services were "[s]ales, other than receipts from intangible property covered by [IC § 6-3-2-2(e)] and sales of tangible personal property." Thus, whether Parent's Services

exceeded the protection of P.L. 86-272 is irrelevant and is beyond the scope of this protest issue. In particular, the Indiana Tax Court explained in *Univ. of Phoenix, Inc. v. Indiana Dep't of State Revenue*, as follows:

> Indiana apportions business income received from performing services based on the geographic location of the income-producing activities. *See* [IC § 6-3-2-2(f)]. If the income-producing activities are wholly within Indiana, the service income is sourced entirely to Indiana. [IC § 6-3-2-2(f)(1)]. If, however, the income-producing activities are performed both in Indiana and in other states, the service income is sourced entirely to Indiana only if a greater proportion of them are performed in Indiana than are performed in any other state. [IC § 6-3-2-2(f)(2)]. Therefore, deciding which subsection applies first requires identifying the income-producing activity.

*Univ. of Phoenix, Inc. v. Indiana Dep't of State Revenue*, 88 N.E.3d 805, 809 (Ind. Tax Ct. 2017).

In this instance, Taxpayers' supporting documentation demonstrated that, for the tax years at issue, Parent was headquartered in Ohio; Sub A (a Kansas corporation) and Sub B (an Ohio corporation) were commercially domiciled in Ohio. Taxpayers' documents also showed that those Services were provided by Parent at its Ohio headquarters and Parent's employees from Ohio only occasionally visited Sub A and Sub B -51 days in 2013 and 44 days in 2014 - in Indiana. Therefore, given the totality of the circumstances, in the absence of other verifiable supporting documentation, the greater portion of the "cost" incurred by Parent in order to provide the Services is deemed incurred in Ohio. That is, the majority of Parent's income-producing activity is performed in Ohio. The "income by providing the Services" must be sourced to Ohio pursuant to IC § 6-3-2-2(f)(2). *Univ. of Phoenix, Inc.*, 88 N.E.3d at 809, 811-14.

In short, the Department is not able to agree that Parent had adjusted gross income derived from sources within Indiana by providing its Services to Sub A and Sub B in Indiana because Sub A and Sub B merely "share[d] of the corporate administrative expenses," reimbursing Parent only for the "expenses without a mark-up." Parent did not have any gross income receipts from those reimbursements. Even if, *arguendo*, assuming that Parent received the reimbursements as income by providing a portion of the Services in Indiana, Parent's "income by providing the Services" must be sourced to Ohio pursuant to *Univ. of Phoenix, Inc.* and IC § 6-3-2-2(f)(2).

***2. Intercompany Advances and Promissory Notes.***

Taxpayers further relied on two separately signed "Revolving Promissory Note[s]" ("Notes"), arguing that Parent received "interest income derived from sources in Indiana" because Parent made "intercompany advances" or "intercompany loans" to Sub A and Sub B. Specifically, Taxpayers referenced IC § 6-3-2-2(a)(5) and IC § 6-3-2-2.2(a), claiming that Parent received "interest income" from these "intercompany loans" and that the loans were "secured by real or tangible personal property" of Sub A and Sub B in Indiana. Taxpayers believed that "an intangible consisting of a security interest in the form of an intercompany loan agreement[] acquired business situs within Indiana." Taxpayers further argued that Parent had "business situs due to its security interest in [Sub A] and [Sub B's] receivables and assets with each entity employing the loan as capital in Indiana to support various business activities in the state . . . of Indiana." Taxpayers continued:

> On the consolidated Federal Form 1120 for all entitles, [Sub A] and [Sub B] reflect an "Inter Division Payable" on Line 18, "Other Current Liabilities." This payable is the recurring credit advances issued from [Parent] to [Sub A] and [Sub B]. It is upon this payable that [Parent] receives its interest income . . . .

Taxpayers thus argued that the "interest income" Parent received from Sub A and Sub B was income derived from sources within Indiana. As such, Parent qualified to join Taxpayers' 2013 and 2014 consolidated returns.

Upon review, the Department is not able to agree. As discussed earlier, Taxpayers' "two-step approach" is mistaken. Specifically, IC § 6-3-4-14 (b) mandates that Parent must first have "adjusted gross income derived from sources within Indiana" to be able to consent to file consolidated returns with Taxpayers. The intercompany "interest income" from the intercompany advances listed on Sub A and Sub B's balance sheet failed to support that Parent had "adjusted gross income derived from sources within Indiana." Additionally, Taxpayers' supporting documents failed to support the intercompany "interest income" from the Notes were "adjusted gross income derived from sources within Indiana." The audit specifically noted, as follows:

> [Taxpayers explain their] intercompany interest allocations as interest that is paid by subsidiaries either (a) on the advances of working capital from [Parent] to the subsidiaries, or on promissory notes. However, neither Sub A nor Sub B reports on its Balance Sheet any Notes or other liabilities for which interest would be paid. (Sub B only records a liability for a third-party legal product liability reserve . . . .

a. Interest Allocations: Advances to Subsidiaries

. . . [Parent] provides working capital to each subsidiary which is identified on the subsidiaries' trial balances as Intercompany Advances. These advances represent costs that are paid by [Parent] on behalf of the subsidiary. These costs incurred by Parent on behalf of the subsidiaries are later expensed to each of the subsidiaries . . . .

Based on documentation provided the amounts [Taxpayers] [] characterized as intercompany interest were not received on debt. These intercompany interest expense amounts are not interest income from loans or installment contracts secured by Indiana property . . . . These allocations are not Indiana-source interest income.

b. Interest Allocations: Promissory Notes

As an alternat[ive] argument, [Taxpayers] provided promissory notes dated 1/1/2000 between [Parent] and each subsidiary [i.e., Sub A and Sub B]. [Taxpayers asserted that intercompany interest received by [Parent] from Indiana operations constituted interest income from loans or installment contract secured by Indiana property. . . .

- The promissory note between [Parent] and [Sub A] was signed by a single corporate officer representing both parties.
- The promissory note between [Parent] and Sub B was signed by a single corporate officer representing both parties who also signed the [above Promissory Note for Sub A].
- Both promissory notes required payment in full by 1/1/2005.
- Security interest in all assets of the subsidiary were granted to [Parent] by each borrower which is a wholly-owned subsidiary of [Parent].
- Neither Sub A nor Sub B reports a Balance Sheet liability of a note or other debt for which interest would be paid.

The promissory notes . . . are not effective for audit years 2013 and 2014. Based on documentation provided the amounts [Taxpayers] [] characterized as intercompany interest were not received on debt. These intercompany interest expense amounts are not interest income from loans or installment contract secured by Indiana property . . . . These allocations are not Indiana-source interest income.

In this instance, Taxpayers' supporting documents demonstrated that Parent is an Ohio corporation, Sub A is a Kansas corporation, and Sub B is an Ohio corporation. Each corporation involved in the intercompany transactions in question (i.e., the Notes) is incorporated or commercially domiciled in a state other than Indiana. Both Notes were signed and executed in Ohio. Both Notes also demonstrated that the same individual served as a corporate officer for Parent, Sub A, as well as Sub B. Both Notes further showed that the same individual signed both Notes on behalf of Parent (the lender and the holder of the Notes) and also on behalf of the borrowers, Sub A and Sub B. The Notes stated "[a]ll funds consisting of principal and interest borrowed [] shall be repaid in full before January 1, 2005."

Taxpayers claimed that although the Notes required that they be "repaid in full before January 1, 2005," the loans continued throughout the tax years at issue. However, as the audit noted that "[n]either Sub A nor Sub B report[ed] on its Balance Sheet any Notes or other liabilities for which interest would be paid." Taxpayers simply referred to the Notes, the trail balance of each company, and their federal returns, Line 18. In particular, the Notes were signed by the same individual who represented the lender and also the borrowers at the same time as the intercompany transactions. Thus, there is a rebuttable presumption that those intercompany transactions were not arms-length. Additionally, in Taxpayers' original Indiana consolidated returns, Sub A and Sub B did not claim these interest expense deductions in their returns and Parent did not report the interest income in the returns. Without contemporaneously verifiable records to support their claimed "interest income" from those intercompany loans (and advances), the Department is not able to agree that Parent had interest income from sources within Indiana. Without "adjusted gross income derived from sources within Indiana," Parent is prohibited from giving its consent to join Taxpayers' group.

Further *arguendo*, assuming that Parent received the interest income which was business income and might be apportionable to Indiana, IC § 6-3-2-2.2(a) specifically states "[i]nterest income . . . from assets in the nature of loans or installment sales contracts that are **primarily secured by or deal with real or tangible personal property** are attributable to this state **if the security or sale property is located in Indiana**." (**Emphasis**

**added**). Taxpayers' Notes demonstrated the intercompany loans did not meet this requirement. The Notes stated that Sub A and Sub B granted to Parent "a continuing security interest in and to all of the assets of [Sub A and Sub B], including without limitation, all accounts receivable, inventory, contract rights, general intangibles, warehouse receipts . . . ." As such, the Department is not able to agree that the "assets . . . are **primarily secured by or deal with real or tangible personal property**" as required (**Emphasis added**). In short, even assuming that Parent received interest income which might be apportioned pursuant to IC § 6-3-2-2(a)(5), Taxpayers' supporting documents failed to establish that Parent's "[i]nterest income . . . from assets in the nature of loans . . . that are **primarily secured by or deal with real or tangible personal property** . . . **[that] the security or sale property is located in Indiana**" - the statutory requirements outlined under IC § 6-3-2-2.2(a). (**Emphasis added**).

Given totality of the circumstances, in the absence of other verifiable supporting documentation, the Department is not able to agree that Parent had interest income through intercompany loans or intercompany advances. Even if, assuming that Parent had interest income through those intercompany transactions, Parent did not have "adjusted gross income derived from sources within Indiana."

**C. Conclusion.**

In conclusion, the audit properly excluded Parent from Taxpayers' Indiana consolidated returns pursuant to the above-mentioned Indiana law because Parent did not have "adjusted gross income derived from sources within Indiana and did not qualify to consent to join Taxpayers' consolidated group. Taxpayers' supporting documentation demonstrated that even though Sub A and Sub B paid Parent for Services and intercompany loans (or advances), but those payments were reimbursements or cost-sharing, which were not income to Parent.

Even if, *arguendo*, Parent received the payments as income, Parent did not have "adjusted gross income derived from sources within Indiana" because the income must be sourced to Ohio pursuant to the above-mentioned Indiana law. As such, Parent remained ineligible to join Taxpayers' consolidated group.

Finally, since Parent did not qualify to file with Taxpayers on a consolidated basis, Parent must be excluded from Taxpayers' consolidated group. In other words, for both 2013 and 2014 years, Parent's income from Services and intercompany loans (or advances) as well as sales receipts were required to be removed from the formulary apportionment of Taxpayers' consolidated returns. As such, the issue of "alternative apportionment" becomes moot.

**FINDING**

Taxpayers' protest is respectfully denied.

**II. Corporate Income Tax - Apportionment (Sales) - Numerator - Throwback Sales.**

**DISCUSSION**

The audit adjusted Taxpayers' numerator of their sales factor because Taxpayers had Indiana-origin sales to states in which Taxpayers "(1) [were] not filing income, franchise/privilege taxes or (2) [were] not subject to income tax on a separate basis." As a result, the audit applied the "Throwback" rule, which increased the numerator of each member of Taxpayers' sales factor for apportionment purposes. Taxpayers argued that those sales should be excluded from their numerator for apportionment purposes and the "Throwback" rule is not applicable.

As discussed in Part I, the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c). The taxpayer thus is required to provide documentation explaining and supporting its challenge that the Department's assessment 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).

Also, as discussed in Part I, "Indiana imposes a tax on every corporation's adjusted gross income derived from sources within Indiana. [IC § 6-3-2-1(b).] In cases where a corporation derives business income from sources both within and without Indiana, the 'adjusted gross income derived from sources within the state of Indiana' is determined by an apportionment formula." *Sherwin-Williams Co. v. Indiana Dep't. of State Revenue*, 673 N.E.2d 849, 851 (Ind. Tax Ct. 1996). That formula operates by multiplying taxpayer's total business income by the sales factor for "all taxable years beginning after December 31, 2010." IC § 6-3-2-2(b)(5).

The "sales factor" consists of a fraction, "the numerator of which is the total sales of the taxpayer in [Indiana] during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year." IC § 6-3-2-2(e).

The basic rule for calculating the sales factor is found at IC § 6-3-2-2. IC § 6-3-2-2(e) provides that "[s]ales of tangible personal property are in this state if . . . (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and . . . (B) the taxpayer is not taxable in the state of the purchaser." IC § 6-3-2-2(n) provides that "[f]or purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if: (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not." Therefore, in order to properly attribute income to a foreign state, a taxpayer must show that one of the taxes listed in IC § 6-3-2-2(n)(1) has been levied against him or that the state has the jurisdiction to impose a net income tax regardless of "whether, in fact, the state does or does not." *Id*.

45 IAC 3.1-1-53 explains:

> Gross receipts from the sales of tangible personal property (except sales to the United States Government-See Regulation 6-3-2-2(e)(050) [45 IAC 3.1-1-54] are in this state: (a) if the property is delivered or shipped to a purchaser within this state regardless of the F.O.B. point or other conditions of sales; or (b) if the property is shipped from an office, store, factory, or other place of storage in this state, and the taxpayer is not taxable in the state of the purchaser. See Regulation 6-3-2-2(n)(010) [45 IAC 3.1-1-64].
> Examples:
> . . .
> (5) **If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. Such sale is termed a "Throwback" sale**. Example: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in Indiana. Taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Indiana for approval and are filled by shipment from the inventory in Indiana. Since the taxpayer is immune under P.L.86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to Indiana, the state from which the merchandise was shipped.
> . . .
> (**Emphasis added**).

45 IAC 3.1-1-38 provides:

> For apportionment purposes, a taxpayer is "doing business" in a state if it operates a business enterprise or activity in such state including, but not limited to:
>
> (1) Maintenance of an office or other place of business in the state
> (2) Maintenance of an inventory of merchandise or material for sale distribution, or manufacture, or consigned goods
> (3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution
> (4) Rendering services to customers in the state
> (5) Ownership, rental or operation of a business or of property (real or personal) in the state
> (6) Acceptance of orders in the state
> (7) **Any other act in such state which exceeds the mere solicitation of orders so as to give the state nexus under P.L.86-272 to tax its net income**. [Discussed in Part I. A.]
>
> As stated in Regulation 6-3-2-2(b)(010) [45 IAC 3.1-1-37], corporations doing business in Indiana as well as other states are subject to the allocation and apportionment provisions of IC 6-3-2-2(b)-(n). (**Emphasis added**).

45 IAC 3.1-1-64 further illustrates:

> A corporation is "taxable in another state" under the Act when such state has jurisdiction to subject it to a net income tax. This test applies if the taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States. **Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provision of Public Law**

**86-272, 15 U.S.C.A. §381-385**. In the case of any "State," as defined in IC 6-3-1-25, other than a state of the United States or political subdivision of such state, the determination of whether such "state" has jurisdiction to subject the taxpayer to a net income tax shall be made by application of the jurisdictional standards applicable to that state of the United States. If jurisdiction to tax is otherwise present, such "state" is not considered as being without jurisdiction to tax by reason of the provisions of a treaty between that state and the United States.

Example:
Corporation X is actively engaged in manufacturing farm equipment in State A and foreign country B. Both State A and foreign country B impose a net income tax but foreign country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and foreign country B.

**Taxpayers are not subject to throwback on sales into states in which they are taxable under this regulation** [45 IAC 3.1-1-64]. See Regulation 6-3-2-2(e)(040) [45 IAC 3.1-1-53].

(**Emphasis added**).

Throughout the protest process, Taxpayers claimed that, to calculate the numerator of the sales factor, the audit erred in throwing some of Taxpayers' sales to their purchasers' states back to Indiana. Taxpayers argued that under the "Indiana's throwback rule," "[a] taxpayer either needs to show that one of the enumerated taxes could have been levied against the taxpayer or that a state or other jurisdiction has the ability to impose a net income tax, whether it actually does or not." Taxpayers continued:

> When determining a jurisdiction has imposed one of the enumerated taxes or has jurisdiction to impose a net income tax, one must first consider that P.L. 86-272 only applies to true domestic net income taxes and does not apply to gross receipts taxes, franchise taxes, taxes for the privilege of doing business in a state, or corporate stock taxes. Further, P.L. 86-272 does not apply to taxes in foreign jurisdictions. . . . Thus, regarding any other enumerated tax, except income tax subject to P.L. 86-272, or regarding any foreign income taxes, a taxpayer is subject to tax merely by having sales into the jurisdiction. No proof of actual payment of the tax is necessary under the Indiana throwback rule, simply whether one of the enumerated taxes could be imposed or whether a jurisdiction to impose a net income tax exist, ignoring whether the state has a net income tax or not.

Upon review, however, Taxpayers are mistaken. Specifically, Taxpayers erred in believing that for Indiana income tax purposes, each member of their consolidated group is "taxable in another state" because "a taxpayer is subject to tax merely by having sales into the jurisdiction" and "[n]o proof of actual payment of the tax is necessary under the Indiana throwback rule . . . ." In particular, Taxpayers were required to "keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records . . . [which] include all source documents necessary to determine the tax . . . ." IC § 6-8.1-5-4(a).

As discussed above, in order to properly attribute income to a foreign state, the taxpayer must show that one of the taxes listed in IC § 6-3-2-2(n)(1) has been levied against him or that the state has the jurisdiction to impose a net income tax. For 2013 and 2014, Taxpayers are required to document and demonstrate that each member of their consolidated group - on a separate basis - was *doing business* and therefore *was "taxable in the state of the purchaser*." In other words, P.L. 86-272 is one part of the test (determining whether a taxpayer is taxable in the state of the purchaser) because states are constitutionally prohibited from imposing taxes on any taxpayer when the taxpayer's activities in those states are either *de minimis* or mere solicitation of orders. 45 IAC 3.1-1-38(7). Thus, to remove those sales from the numerator of the sales factor, each member of Taxpayers must be taxable in those states of their purchasers. To that end, Taxpayers must demonstrate that each member of their consolidated group was doing business in those states or jurisdictions and was therefore taxable - "net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax" - in those states or jurisdictions. Simply asserting that Taxpayers were taxable in other states "merely by having sales into the jurisdiction" without verifiable supporting documentation is not sufficient. Thus, those sales originated from Taxpayers' Indiana facilities were required to be thrown back to Indiana for apportionment purposes.

In short, given totality of the circumstances, in the absence of other verifiable supporting documentation, when members of Taxpayers' consolidated group were not taxable in the states of their purchasers, Taxpayers were required to throw back those sales in the numerator of each member's sales factor in the numerator for apportionment purposes.

## FINDING

Taxpayers' protest is respectfully denied.

## SUMMARY

Taxpayer's protest of the Issue I and Issue II is respectfully denied.

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