

Supplemental Letter of Findings: 02-20200321
Indiana Corporate Income Tax
For the Years 2014 and 2015

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

HOLDING

Upon rehearing, the Department continued to disagree with out-of-state Holding Company's argument that it shared a unitary business relationship with multi-state Gas Station Company; although Holding Company participated in Gas Station Company's day-to-day operational decisions, Holding Company failed to establish the requisite "functional integration," "centralization of management," and "economies of scale" required of a unitary business relationship.

ISSUE

I. Indiana Corporate Income Tax - Unitary Relationships and the Apportionment of Partnership Income.

Authority: IC § 6-3-1-19; IC § 6-3-2-1(b); IC § 6-8.1-5-1(c); *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768 (1992); *Container Corp. v. Franchise Tax Board*, 463 U.S. 159 (1983); *F.W. Woolworth Co. v. Taxation and Revenue Dep't.*, 458 U.S. 354 (1982); *ASARCO, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307 (1982); *Exxon Corp. v. Department of Revenue*, 447 U.S. 207 (1980); *Mobil Oil Corp. v. Commissioner of Taxes*, 445 U.S. 425 (1980); *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); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Hunt Corp v. Indiana Dep't of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999); *Sherwin-Williams Co. v. Indiana Dep't. of State Revenue*, 673 N.E.2d 849 (Ind. Tax Ct. 1996); [45 IAC 3.1-1-153](#); David L. Scott, *Wall Street Words* (1997); *Investopedia, Holding Company*, <https://www.investopedia.com/terms/h/holdingcompany.asp>.

Taxpayer argues that it has a "unitary relationship" with an Indiana business partner and that the Department's audit conclusion to the contrary, along with the previous Letter of Findings, were both wrong.

STATEMENT OF FACTS

Taxpayer is an out-of-state "holding company" which owns a minority interest in two multi-member LLCs. One of the LLCs owns and operates gas stations ("Gas Station LLC"). The other LLC is yet another "holding company" ("Holding Company LLC").

Taxpayer, Gas Station LLC, and Holding Company LLC - along with various other related entities - are all owned by a common parent venture capital company herein designated as "Venture Capital."

Taxpayer disposed of its Gas Station LLC interest in 2015. Taxpayer disposed of its Holding Company LLC interest in 2014.

In reporting its Indiana corporate income tax, Taxpayer treated its interest in the two LLCs as unitary. Taxpayer included Gas Station LLC's distributive share of income/loss as apportionable income; Taxpayer did not include its eventual gain earned on the 2015 sale of Gas Station LLC as apportionable income because it treated this gain as non-business income.

Taxpayer included Holding Company LLC's distributive income/loss as apportionable income in its Indiana corporate income tax return; Taxpayer did not include the eventual gain earned on the 2014 sale of Holding Company LLC as apportionable income because it treated this gain as non-business income.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's 2014 and 2015

Indiana corporate income tax returns. The Department's audit concluded that Taxpayer, Gas Station LLC, and Holding Company LLC did *not* share a unitary business relationship.

The Department's audit found that Taxpayer and Holding Company LLC "did not share common management, common operational resources, or economies of scale in its investment of [Holding Company LLC]"

The Department's audit found that Taxpayer and Gas Station LLC did not share a unitary relationship because Taxpayer "[did] not control the day-to-day activities of [Gas Station LLC]" and that Taxpayer does not have the "means to participate in the operation of [Gas Station LLC] since [Taxpayer] has no employees or physical assets other than the interest in the partnership."

The Department's decision - finding that Taxpayer, Gas Station LLC, and Holding Company LLC did not share a unitary relationship - resulted in assessment of additional 2014 and 2015 Indiana corporate income tax. Taxpayer disagreed with the proposed assessment to the extent that the Department found that Taxpayer and *Gas Station LLC* did not have a unitary relationship. Taxpayer submitted a protest to that effect. An administrative hearing was conducted and Letter of Findings 02-20191221 (June 3, 2020), [20200826-IR-045200427NRA](#), was issued denying the protest.

In the "Holding" portion of the Letter of Findings (LOF), the Department stated that:

[A]lthough both [Taxpayer] and Gas Station Company participated in and were members of a joint operational arrangement, [Taxpayer] failed to establish that the parties were functionally integrated, shared centralized management, and that they benefitted from the economies of scale characterizing a unitary relationship.

In arriving at that conclusion, the June 3 LOF concluded that Taxpayer had failed to establish that it exercised "operational control" over the Indiana gas station business.

Taxpayer disagreed with the LOF and submitted a rehearing request along with additional documentation intended to support their position. The rehearing request was granted, and a supplemental hearing was conducted by telephone during which Taxpayer's representatives explained the basis for their arguments. This Supplemental Letter of Findings results.

I. Indiana Corporate Income Tax - Unitary Relationships and the Apportionment of Partnership Income.

DISCUSSION

The issue addressed in this Supplemental Letter of Findings is whether Taxpayer has met its statutory burden of establishing that it has a "unitary relationship" with Gas Station LLC and that the Department's audit decision to the contrary and the June 3 LOF were both erroneous in their conclusions.

The LOF recognized that Gas Station LLC and Taxpayer were represented by members of a Board of Managers allowing Taxpayer to participate in the "the day-to-day operation of Gas Station LLC's travel centers," the LOF found little evidence that - in practice - the Board members actually did so. As explained in the LOF:

Although the governing agreement clearly states that the Board of Managers *could* make such operational decisions, the evidence that they actually did so is absent. There is little or nothing to indicate that Taxpayer met its requirement of "showing [a] day-to-day operational control in the partnership . . . indicat[ing] the existence of a unitary business relationship."

Taxpayer again here asserts that both the audit and the LOF were erroneous because Taxpayer and Gas Station LLC "are a unitary business for Indiana corporate income tax reporting purposes, and that flow-through income from [Gas Station LLC] to Taxpayer was properly reported as unitary on the Forms IT-20 for the years at issue." Therefore "income from [Gas Station LLC] is apportionable to Indiana for the periods at issue."

This Supplemental Letter of Findings ("SLOF") incorporates both the findings of fact and statements of law as set out in the June 3, LOF. However, this SLOF restates a portion of the relevant facts and law for clarity's sake and for the convenience of the reader.

A. Taxpayer Burden of Proof.

As with any assessment, it is Taxpayer's responsibility to establish that this particular 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).

In making its case, each 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, informed and reasonable interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

B. Audit Report Summary and Conclusions.

The Audit Report found that Taxpayer's income from Gas Station LLC should not be apportioned because Taxpayer and Gas Station LLC did not share a unitary relationship. The Audit Report pointed to eight factors leading to this conclusion:

- Taxpayer holds a 36.79[percent] member interest in [Gas Station LLC];
- Taxpayer is not the managing member or the Tax Matters Member;
- Taxpayer has no employees or officers;
- Taxpayer has no property;
- Taxpayer has no intercompany transactions with [Gas Station LLC];
- Taxpayer has no unity of use, operations or control;
- Taxpayer's Parent Company [Venture Capital] is in the business of venture capital and is using Taxpayer as a vehicle to hold interest in their investment;
- The Tax Matters Member is in the business of operating travel centers which is the same business as [Gas Station LLC].

The Department's audit relied on the "Three Unities" test (management, integration, economies) to determine whether Taxpayer and Gas Station LLC shared a unitary relationship. According to the Report, and in each test case, Taxpayer and Gas Station LLC did not.

- "Centralized Management": Taxpayer has no employees (no salaries or benefits on the 1120) so [Taxpayer] has no means to oversee or contribute to the day-to-day operations of [Gas Station LLC];
- "Functional Integration": There are no combined functions since the Taxpayer has no employees, assets or other activities other than holding the partnership interest;
- "Economies of Scale": Taxpayer was formed for the express purpose of holding the interest in the partnership . . . the Taxpayer has no other purpose, no property, no employees and no activities [other] than holding the interest in the two LLCs, so there can be no economies of scale.

The audit found that it was "plainly obvious" from Taxpayer's 2014 and 2015 federal returns that it and Gas Station LLC did not share "common management, common operational resources, of economies of scale" From those returns, Taxpayer had "no gross receipts or sales and no expenses for" the following:

- Compensation of officer[s]
- Employee wages
- Repairs or maintenance
- Rental Expense
- Depreciation
- Advertising
- Pension or profit sharing
- Employee benefit programs

The audit concluded that Taxpayer erroneously treated its interest in Gas Station LLC as unitary and in apportioning the income from Gas Station LLC. As summed up in the final report, "The only sales reported in the numerator of the sales factor are the Taxpayer's share of [Gas Station LLC's] Indiana sales." Taxpayer "does not control the activities of [Gas Station LLC]," and Taxpayer - which has no employees or property - "does not have the means to do so."

C. Indiana Law of Partnership Income and Unitary Relationships.

As in the June 3, LOF, the Department notes the following relevant law. For example, the term "Partnership" is defined at IC § 6-3-1-19:

- (a) The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this chapter, a corporation or a trust or an estate. *The term also includes a limited liability company that is treated as a partnership for federal income tax purposes.*
- (b) The term "partner" means a member of a partnership.

(Emphasis added).

"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).

[45 IAC 3.1-1-153](#) provides:

- (a) A corporate partner's share of profit or loss from a partnership will be included in its federal taxable income and therefore generally subject to the same rules as any other adjusted gross income.
- (b) If the corporate partner's activities and the partnership's activities constitute a unitary business under established standards, disregarding ownership requirements, the business income of the *unitary business* attributable to Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the corporate partner and its share of the partnership's factors for any partnership year ending within or with the corporate partner's income year, with the following modifications:
 - (1) The value of property which is rented or leased by the corporate partner to the partnership or vice versa shall, with respect to the corporate partner, be excluded from the property factor of the partnership or eliminated to the extent of the corporate partner's interest in the partnership, whichever the case may be, in order to avoid duplication.
 - (2) Intercompany sales between the corporate partner and the partnership shall be eliminated from the corporate partner's sales factor as follows:
 - (A) Sales by the corporate partner to the partnership to the extent of the corporate partner's interest in the partnership.
 - (B) Sales by the partnership to the corporate partner not to exceed the corporate partner's interest in all partnership sales.
- (c) If the corporate partner's activities and the partnership's activities *do not constitute a unitary business* under established standards, disregarding ownership requirements, the corporate partner's share of the partnership income attributable to Indiana shall be determined as follows:
 - (1) If the partnership derives business income from sources within and without Indiana, the business income derived from sources within Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the partnership.
 - (2) If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to formula apportionment.
- (d) A partner's distributive share of income will be adjusted by the partner's proportionate share of the partnership's income that is exempt from taxation under the Constitution and statutes of the United States and by the partner's proportionate share of the partnership's deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States.
- (e) After determining the amount of business income attributable to Indiana under subsection (c), the corporate partner's distributive share of such income shall be added to the corporate partner's other business income apportioned to Indiana and its nonbusiness income, if any, allocable to Indiana, in determining the corporate partner's total taxable income. *(Emphasis added.)*

The Indiana Tax Court, in *Hunt Corp v. Indiana Dep't of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999), provided guidance for computing a corporate taxpayer's tax liabilities when a taxpayer and its subsidiaries/affiliates file consolidated returns as a group and where some income was received from its subsidiaries/affiliates in the form of distributive partnership shares. In that decision, the court explained that:

Under section 6-3-2-2, in order to determine where the income from the corporate partnership is to be attributed, it must first be determined whether that income constitutes business or nonbusiness income for the affiliated group. That determination is made by ascertaining whether the affiliated group and the partnerships are engaged in a unitary business or not. If the income from the partnerships constitutes business income (i.e., if the affiliated group and the partnerships are engaged in a unitary business), under section 6-3-2-2, all of that income would be subject to apportionment based on an application of the affiliated group's property, payroll, and sales factors. If the income from the partnerships constitutes nonbusiness income for the affiliated group (i.e., if the affiliated group and the partnerships are not engaged in a unitary business), that income will be allocated to a particular jurisdiction. Section 6-3-2-2 does not specifically address the question of whether a partnership's property, payroll, and sales factors may be considered in apportioning a corporation's business income derived from a corporate partnership. The regulation [\[45 IAC 3.1-1-153\]](#) addresses this technical problem and provides a comprehensive description of the treatment of income derived from corporate partnerships. Mirroring the analysis required by section 6-3-2-2, the regulation makes the crucial distinction between the situation where the corporate partner's activities and the partnership's activities constitute a unitary business and when they do not. *Id.* at 776.

The United States Supreme Court has defined the unitary business principle which allows a State to apply formula apportionment to all unitary business income which a taxpayer's affiliates or subsidiaries received. *Container Corp. v. Franchise Tax Board*, 463 U.S. 159, 180 (1983). See *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768, 778 (1992); *F.W. Woolworth Co. v. Taxation and Revenue Dep't.*, 458 U.S. 354, 362 (1982); *ASARCO, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307, 315 (1982); *Exxon Corp. v. Department of Revenue*, 447 U.S. 207, 219 (1980); *Mobil Oil Corp. v. Commissioner of Taxes*, 445 U.S. 425, 436-442 (1980). The three unities are: "functional integration," "centralization of management," and "economies of scale." *Id.* at 103-04. However, the Court has held that the showing of day-to-day operational control in the partnership indicates the existence of a unitary business relationship. See *Allied-Signal, Inc.*, 504 U.S. at 788; *Container Corp. of America*, 463 U.S. at 166.

D. Taxpayer's Original Argument that it Shares a Unitary Relationship with Gas Station LLC.

In support of its original argument that it shared a unitary relationship with Gas Station LLC, Taxpayer cited to its LLC agreement between itself and Gas Station LLC.

The business and affairs of [Gas Station LLC] shall be managed by the Members acting through their representatives on the Board of Managers . . . no Member shall act unilaterally on behalf of [Gas Station LLC] or any of its Subsidiaries without the approval of other members and no member shall have power to unilaterally to bind [Gas Station LLC] or any of its members.

According to Taxpayer, control over Gas Station LLC is vested in a "Board of Managers." Taxpayer points out that the Board of Managers has "jurisdiction to approve the following:"

- The President and Chief Executive Officers selection of Executive Officers of [Gas Station LLC] evaluating their performance and planning for succession;
- [Gas Station LLC's] strategies, Annual Operating Budgets, Business Plans and Annual Capital Budgets;
- Significant external business opportunities for [Gas Station LLC], including acquisitions, mergers and divestitures;
- Policies of [Gas Station LLC] that maintain high standards in areas of business ethics, environmental responsibility, employee safety and health, community, government, employee and customer relations;
- External and internal audits and management responses thereto; and
- Compensation and benefits policies for employees of [Gas Station LLC].

Taxpayer emphasized what it believes is the significance of the relationship imposed under the LLC Agreement.

Pursuant to the LLC Agreement, [Gas Station LLC] was a "member managed limited liability company" where the Members ran the day-to-day activities of the limited liability company . . . Taxpayer as a Member of [Gas Station LLC] was involved in the day-to-day activities of [Gas Station LLC] and contributed to [Gas Station LLC's] business through common management, which establishes a unitary business relationship . . . Taxpayer was not a mere passive Investor in [Gas Station LLC]. Rather, the LLC Agreement distinguishes Taxpayer from taxpayers who were limited partners of a partnership that were excluded from the right to exercise management and control of the partners.

Taxpayer maintains that the presence of its two - and in some years three - representatives on the Board of

Managers satisfies the requirement (noted above) of "common management" indicative of a unitary business relationship.

Taxpayer also argues that the unitary business principle is part and parcel of its relationship with Gas Station LLC and has been since the relationship first began.

The foundation of Taxpayer and [Gas Station LLC's] relationship . . . signifies the existence of a unitary relationship. Taxpayer was specifically formed to invest in and be in the business of [Gas Station LLC's] one stop travel centers. The sole purpose of Taxpayer's formation was to be a part of and integrate with [Gas Station LLC] both within and without Indiana. The integral nature of [Gas Station LLC] to Taxpayer's business and Taxpayer's overall involvement in the decision-making process for [Gas Station LLC's] operations highlights the truly unitary nature of Taxpayer and [Gas Station LLC's] business operations.

Taxpayer concluded its analysis as follows:

Taxpayer and [Gas Station LLC] are a unitary business for Indiana corporate income tax reporting purposes, and the flow-through income from [Gas Station LLC] to Taxpayer was properly reported as unitary on the Forms IT-20 for the periods at issue. As such, income from [Gas Station LLC] is apportionable pursuant to [45 IAC 3.1-1-153\(c\)](#). Accordingly, since Taxpayer and [Gas Station LLC] constitute a unitary business, the business income from [Gas Station LLC] was properly apportioned to Indiana on Taxpayer's Forms IT-20 as filed for the periods at issue.

E. June 3 LOF Conclusions of Fact and Law.

In the Department's June 3 LOF, the Department agreed with the audit's conclusion and disagreed with Taxpayer's assertion that it provided evidence which established a unitary relation with Gas Station LLC. Although acknowledging the existence and presumed authority of the Board of Managers, the LOF found little evidence of actual "operational control" over the day-to-day activities of Gas Station LLC.

As explained in the LOF, Taxpayer - to that point - had,

declined to provide the specifics requested. Did the Board of Managers - including Taxpayer's two members - decide when and how to expand or contract its gas station operations? Did they make decisions on hiring or firing Gas Station LLC's managers or employees? Did they make decisions on the pricing of fuel sold at the Gas Station LLC's locations? Did they make decisions on the impact or cost of increased or changed state, federal, or state environmental regulations? Although the governing agreement clearly states that the Board of Managers *could* make such operational decisions, the evidence that they actually did so is absent. There is little or nothing to indicate that Taxpayer met its requirement of "showing of day-to-day operational control in the partnership . . . indicat[ing] the existence of a unitary business relationship." *Allied Signal*, 504 U.S. at 788.

In its response to the LOF and in its rehearing request, Taxpayer asserts it can now do just that; it can establish that the Board of Managers exercises "day-to-day operational control in the partnership" and that there is a "flow of value between the entities." *Hunt Corp.*, 709 N.E.2d at 769; *Allied Signal*, 504 U.S. at 788.

F. Taxpayer's Supplemental Arguments Intended to Establish That it Shares a Unitary Relationship with Gas Station LLC.

Taxpayer states that it has more than a simple investor/investee relationship with Gas Station LLC and that it - acting through the Board of Managers - can establish it has a unitary relationship with Gas Station LLC. Taxpayer once again points out that it has - depending on the years at issue - two or three operational members of the ten-person Board of Managers. Taxpayer points out the following:

- One of Taxpayer's members was chairman of Gas Station LLC's finance committee;
- One of Taxpayer's members was chairman of Gas Station LLC's management board;
- The Board of Managers - including Taxpayer's then three members - made decisions concerning new Gas Station LLC's business locations;
- The Board of Managers - including Taxpayer's then three members - made decisions on updating Gas Station LLC's point of sales fuel systems;
- The Board of Managers - including Taxpayer's then two members - made decision regarding "management structure changes at [Gas Station LLC's] stores that would convert co-manager level employees from

salaried to hourly [employees];"

- One of Taxpayer's members served on the "Audit, Salary and Benefits, and Tax Committees;"
- One of Taxpayer's members was designated as chairman of Gas Station LLC's Finance Committee;
- The Board of Managers - including Taxpayer's then two members - "removed" Gas Station LLC's president and named a replacement officer;
- The Board of Managers - including Taxpayer's then two members - considered lease arrangements for one of Gas Station LLC's Indiana locations;
- The Board of Managers - including Taxpayer's then two managers - reviewed the results of a consulting company's study intended to predict future diesel demand;
- The Board of Managers - including Taxpayer's then two managers - considered, reviewed, and then approved Gas Station LLC's operating and capital budgets;
- The Board of Managers - including Taxpayer's then two managers - considered the installation and implementation of a "FuelPact" system at Gas Station LLC's fuel locations which automates the calculation of fuel rebates;
- Taxpayer's two managers participated in the merger and acquisition of a competing Indiana fuel distribution business including "financing, post-acquisition structuring and due diligence." The two Taxpayer Managers also participated in issues related to a rebate controversy stemming from that competitor acquisition.
- Taxpayer's manager/appointee also participated in decisions effecting day-to-day operational aspects of Gas Station LLC's business including "installation of cash recycler machines" at all Indiana locations, implementation of a "tablet" based technology which facilitated sales and inventory reporting, and the installation of "assisted checkout machines" at twelve of the Indiana fuel stations.

G. Analysis of the Facts and Law and the Conclusion.

At the outset of this analysis and supplemental conclusion, it bears repeating several points of law. Taxpayer is under an obligation to establish that the assessment is wrong and that courts (and Taxpayer) are required to defer to the Department's analysis of the facts and law even in the face of what is Taxpayer's equally "reasonable" interpretation of those same facts and law. IC § 6-8.1-5-1(c); *Caterpillar, Inc.*, 15 N.E.3d at 583.

The issue is whether Taxpayer has established it shares a unitary business relationship with Gas Station LLC, and the Department's contrary audit decision, the June 3 LOF's conclusions, and the consequent assessment of additional corporate income tax - were wrong.

In this supplemental decision, the Department agrees that Taxpayer has provided evidence - documented by minutes of the Board of Managers - establishing that Taxpayer, to a limited degree, participates in the "day-to-day operation of Gas Station LLC. However, beyond that general, but not controlling oversight, the Department continues to conclude that Taxpayer has not established that it shares a unitary relationship with Gas Station LLC.

The Supreme Court's guidance on this issue requires that the parties claiming a unitary relationship be functionally integrated, share centralized management, and that the parties benefit from economies of scale. See *Allied-Signal, Inc.*, 504 U.S. at 788; *Container Corp. of America*, 463 U.S. at 166.

In this case, Taxpayer has nothing substantive to share with Gas Station LLC because Taxpayer has no employees, no payroll, and no gas stations. Taxpayer and Gas Station LLC are not even in the same business which would suggest that the two parties do not benefit from economies of scale or functional integration attributable to their relationship.

Taxpayer is a "holding company" which simply "is a type of financial organization that owns a controlling interest in other companies, which are called subsidiaries," while Gas Station LLC is in the business of running travel centers which are at opposite ends of the business spectrum. David L. Scott, *Wall Street Words*, 176 (1997). ("Holding companies hold the controlling stock in other companies." *Investopedia, Holding Company*, <https://www.investopedia.com/terms/h/holdingcompany.asp>. (Last visited October 4, 2020.) Taxpayer falls short of even the "holding company" definition because it does not own a controlling interest in Gas Station LLC.

The Department also takes note of the fact that Taxpayer reported the eventual proceeds from the sale of Gas Station LLC as non-business income allowing Taxpayer to avoid paying Indiana tax on its proceeds from that sale. In other words, Taxpayer regarded the sale proceeds as not "constituting income from transactions and activity in the regular course of the taxpayer's trade or business, including income from tangible and intangible property if the acquisition, management, or disposition of the property are *integral parts of the taxpayer's regular trade or business.*" [45 IAC 3.1-1-29](#). (*Emphasis added.*)

Although Taxpayer has established that it participated in the general oversight of Gas Station LLC's day-to-day operational matters, it has failed to establish that Gas Station was an integral part of its regular trade or business.

FINDING

Taxpayer's protest respectfully denied.

October 8, 2020

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