

IT 21-0013 12/8/21 ALTERNATIVE APPORTIONMENT

Alternative apportionment not appropriate where royalties earned from licensing the use of intangible personal property did not compromise more than 50% of taxpayer's total gross receipts included in gross income and are excluded from sales factor pursuant to IITA Section 304(a)(3)(B-2). (This is a GIL.)

December 8, 2021

Re: Petition for Alternative Apportionment

Dear XXXXX:

This is in response to your petition to use an alternative method of allocation or apportionment. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding against the Department, but only as to the taxpayer issued the ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of Department policy that apply, interpret or prescribe the tax laws and are not binding against the Department. See 2 Ill. Adm. Code 1200.120(b) and (c). For the reasons discussed below, your petition cannot be granted based on the information provided.

Your petition states as follows:

Enclosed please find the amended Illinois Form 1120-X, Amended Corporation Income and Replacement Tax Return, prepared on behalf of TAXPAYER ("Taxpayer") for the tax years ended June 30, 20XX and June 30, 20XX.

Taxpayer is amending its return to request that the Illinois Department of Revenue approve the utilization of alternative apportionment and accept the Amended Return as filed and prospectively for tax years ending on or after June 30, 20XX. Please refer to Statement 1 in the amended returns for additional details. In addition, the refund claims correct an error to include COMPANY 1'S (FEIN: XXXXX) federal taxable income into the returns. As a result, Taxpayer is requesting a tax refund in the amount of \$\$\$\$ for the tax year ended June 30, 20XX; and a tax refund in the amount of \$\$\$\$ for the tax year ended June 30, 20XX.

Please direct all correspondence regarding this matter to my attention. If you need further information or have questions regarding this matter, please contact me at (XXX) XXX-XXXX.

Your submission includes the following additional information pertinent to your petition for alternative apportionment:

TAXPAYER (“COMPANY” or “Taxpayer”) timely filed an original 20XX Illinois Corporate Income and Replacement Tax Return (“Return”). The Taxpayer is now amending its 20XX Return to revise the Taxpayer’s apportionment. Taxpayer respectfully requests that the Illinois Department of Revenue (“Department”) approve the utilization of alternative apportionment and accept the Amended Return as filed and for prospective tax years ending on or after June 30, 20XX.

Background Information

TAXPAYER is a wholly owned subsidiary of COMPANY 2 (“COMPANY 2”). COMPANY 2 was formed in YEAR, when the firm made its initial public offering, and was later incorporated in STATE in YEAR. COMPANY 2 operates solely outside of Illinois in southwest STATE. COMPANY 2, along with its subsidiaries, is a global leader in the consumer goods industry providing branded products of superior quality and value.

The COMPANY 2 business revolves around five major segments: Beauty; Grooming; Health Care; Fabric and Home Care; and Baby, Feminine, and Family Care.¹ COMPANY 2’s products are instantly recognizable when browsing the aisles of most stores. Brands available around the globe include: NAME among many others. These products are sold in more than 180 countries and territories, primarily through mass merchandisers, e-commerce, grocery stores, membership club stores, drug stores, department stores, distributors and pharmacies.² The United States (“U.S.”) accounts for roughly %%% of the company’s worldwide net sales.³ Europe is responsible for %%% of sales, Asia contributes %%% and Latin America %%%.⁴ To facilitate such activities, the company has on-the-ground manufacturing and commercial operations in approximately ## countries.⁵

COMPANY 2, along with other U.S. subsidiaries that are included in the Illinois combined filing group, own many valuable intangibles used in the U.S. and globally. COMPANY 2 and its U.S. subsidiaries are responsible for all corporate governance and administrative duties, advertising, and

¹ COMPANY 2, Annual Report (Form 10-K) (June 30, 20XX).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

research and development for its global brands. As a result, in addition to sales of consumer goods, COMPANY 2 and certain U.S. subsidiaries receive royalties from foreign affiliates through licensing arrangements for the intangibles owned by COMPANY 2 and its U.S. subsidiaries. These foreign royalties are earned as a percentage of sales from foreign affiliates and represent the primary source of royalties reported on the Federal 1120. The income producing activities related to the royalty income, including research and development, monitoring, and supervision of the intangible personal property, take place entirely outside of Illinois.

Pursuant to 35 ILCS 5/304(h) of the Illinois Income Tax Act (“IITA”, “35 ILCS 5/”, “the Act”, “ILCS Chapter 35 Section 5/”), Taxpayer filed its original return following the standard apportionment method using a single sale factor formula. Taxpayer’s sales factor consisted primarily of sales of tangible personal property representing consumer goods sold by members of the Illinois combined group. However, COMPANY 2 and certain U.S. subsidiaries were unable to include in the Taxpayer’s sales factor the royalties earned from licensing the use of intangible personal property because such income did not comprise more than 50% of Taxpayer’s total gross receipts included in gross income as required under IITA 35 ILCS 5/304(a)(3)(B-2).

Alternative Apportionment

Law

ILCS Chapter 35 Section 5/304(f) provides that if the normal allocation and apportionment methods do not fairly represent the market for the person’s goods, services, or other sources of business income in Illinois, the person can petition the Director of Revenue to permit separate accounting or the use of any other method to create an equitable allocation and apportionment of the taxpayer’s business income.

III. Admin. Code §100.3390(a)(c) (IITA Section 304(f)) reads as follows:

A departure from the required apportionment method is allowed only when those methods do not accurately and fairly reflect business activity in Illinois (for taxable years ending before December 31, 2008) or market in Illinois (for taxable years ending on or after December 31, 2008). An alternative apportionment method may not be invoked, either by the Director or by a taxpayer, merely because it reaches a different apportionment percentage than the required statutory formula. However, if the application of the statutory formula will lead to a grossly distorted result in a particular case, a fair and accurate alternative method is appropriate. The party (the Director or the taxpayer) seeking to utilize an alternative apportionment method has the burden of going forward with the evidence and proving by clear

and convincing evidence that the statutory formula results in the taxation of extraterritorial values or operates unreasonably and arbitrarily in attributing to Illinois a percentage of income that is out of all proportion to the business transacted in this State (for taxable years ending before December 31, 2008) or the market for the taxpayer's goods, services or other sources of business income in this State (for taxable years ending on or after December 31, 2008). In addition, the party seeking to use an alternative apportionment formula must go forward with the evidence and prove that the proposed alternative apportionment method fairly and accurately apportions income to Illinois based upon business activity in this State (for taxable years ending before December 31, 2008) or the market for the taxpayer's goods, services or other sources of business income in this State (for taxable years ending on or after December 31, 2008).

The Appellate Court of Illinois held in *Miami Corp v. Dept. Rev.*, 571 N.E.2nd 800 that use of the statutory method was inappropriate. It was determined that the taxpayer was entitled to utilize separate accounting. The statutory apportionment formula (the three-factor method) did not fairly represent activities in Illinois with respect to Louisiana oil and gas reserves which generated in excess of 80% of the taxpayer's total income. The court found that the distortion created by the use of the statutory formula amounted to an unfair representation of the taxpayer's activities within Illinois. Part of the court's reasoning was based on the fact that intangibles (sourced to Louisiana) were not included in the property factor and substantial out-of-state independent contractors were not considered in the payroll factor.

The Department has granted alternative apportionment requests when the statutory apportioned income attributable to business activity in Illinois does not fairly reflect the activities of the taxpayer in Illinois. In Private Letter Ruling IT 05-0002-PLR (3/29/2005), the Department granted the use of separate accounting when the taxpayer demonstrated that the statutory apportionment method attributed more income to Illinois than was earned by the individual unitary group members who were conducting business in Illinois. The Department further approved a separate accounting method for the same taxpayer in Private Letter ruling IT 05-0007-PLR (10/17/2005).

The Illinois Administrative Code sets forth the rules and requirements for alternative apportionment petitions.⁶ Subsection (e) of the Regulation prescribes three options for requesting alternative apportionment. In relevant part, the Regulation provides that a petition for alternative apportionment may be filed as an attachment to a return amending an

⁶ See 86 Ill. Admin. Code §100.3390 (the "Regulation").

original return which was filed using the statutory allocation and apportionment rules.⁷

Subsection (a) of the Regulation identifies the types of alternative apportionment that may be requested. If reasonable, a taxpayer may petition for the following: (1) separate accounting; (2) the exclusion of any one or more of the factors; (3) the inclusion of one or more additional factors which will fairly represent the person's business activity in the state; or (4) the employment of any other method to effectuate an equitable allocation and apportionment of the person's income.⁸

Discussion

In Taxpayer's case, the standard apportionment formula does not fairly represent the market for its business income, which includes royalties earned from the licensing of intangible personal property. Taxpayer is petitioning for an equitable allocation and apportionment of its income under 86 Ill. Admin. Code §100.3390(a)(4).

As stated above, Taxpayer was unable to include in its sales factor royalties earned from licensing the use of intangible personal property primarily consisting of royalties paid by foreign affiliates through licensing arrangements for the intangibles owned by COMPANY 2 and its U.S. subsidiaries included in the Illinois combined group. Taxpayer asserts that the application of the standard single sales factor which excludes the royalties from the sales factor is distortive and does not fairly represent the market for the taxpayer's business income.

For the fiscal years ending June 30, 20XX - June 30, 20XX, the royalties earned by COMPANY 2 and its subsidiaries included in the Illinois combined filing group represents %%% of total gross income, while the royalty income represents %%% of Illinois combined unitary income. The royalties earned by the Taxpayer are included in business income subject to formula apportionment in Illinois. However, there is no representation of the royalties in the sales factor because the royalties are excluded pursuant to IITA 35 ILCS 5/304(a)(3)(B-2).

IITA 35 ILCS 5/304(a)(3)(B-2) provides as follows:

Gross receipts from the license, sale, or other disposition of patents, copyrights, trademarks, and similar items of intangible personal property, other than gross receipts governed by paragraph (B-7) of this item (3), may be included in the numerator or denominator of the sales factor only if gross receipts from licenses, sales, or other

⁷ 86 Ill. Admin. Code §100.3390(e)(2).

⁸ 86 Ill. Admin. Code §100.3390(a)(1)-(4).

disposition of such items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the 2 immediately preceding tax years; provided that, when a taxpayer is a member of a unitary business group, such determination shall be made on the basis of the gross receipts of the entire unitary business group.

The standard apportionment formula allows gross receipts from the licensing of intangible property (e.g., royalties) to be included in the sales factor only if gross receipts from licensing of such items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the 2 immediately preceding tax years. Because Taxpayer's royalty income consists of only %%% of total gross income, the royalty income is excluded from the sales factor. Note, if Taxpayer's royalty income was included in the sales factor, the gross receipts would be sourced to Illinois if the income producing activity of such income is performed in the state based on costs of performance.

Effective for tax years ending on or after December 31, 2008, gross receipts from transactions involving intangible personal property when the taxpayer is not a dealer with respect to the intangible personal property, are attributed to Illinois if the income producing activity is performed in the state, based on costs of performance.⁹ Such gross receipts are sourced in Illinois when the income producing activities are performed both in and outside the state and, based on costs of performance, a greater proportion of the income producing activity is performed in Illinois than in any other state.¹⁰

However, the standard apportionment formula was not created with Taxpayer's facts in mind. It does not consider the significant impact the earned royalties represent of total business income. The royalty income represents %%% of the total combined business income for the tax years ended June 30, 20XX - June 30, 20XX. Yet there is no connection between Illinois and the foreign royalties, including from where they were paid and received, as well as the income producing activity which takes place outside of Illinois.

In *Colgate-Palmolive Company, Inc. ("Colgate-Palmolive") v. Bower*, No. 01 L 50195 (10/15/2002) ("*Colgate*"), the Cook County Judicial Circuit Court held that a Delaware corporation that had business operations in Illinois was not allowed to modify the standard apportionment formula (the three-factor formula method). Colgate-Palmolive filed for alternative apportionment to add a fourth intangible property factor to the Illinois three-factor formula to fairly represent foreign royalties and dividends from

⁹ 86 Ill. Admin. Code §100.3370(c)(6).

¹⁰ 86 Ill. Admin. Code §100.3370(c)(6)(C)(ii).

foreign subsidiaries. The Administrative Law Judge ruled that Colgate-Palmolive failed to meet its burden of establishing that the standard formula failed to “fairly represent the extent” of Colgate-Palmolive’s business in Illinois.¹¹ The court found that “ ... each part of Illinois' statutory three factor formula takes into account the ordinary income producing activities and expenses related to Colgate-Palmolive's production of the income at issue, as well as the fact the income producing activities related to the particular income at issue were not performed within Illinois.”¹²

In reaching the decision that Colgate-Palmolive failed to meet its burden, the court reasoned that all three factors had representation of the activities associated with the foreign royalties and dividends from foreign subsidiaries. Specifically, the sales factor included the dividends from foreign corporations and royalty income earned from licensing intangible personal property to foreign subsidiaries. Regarding the royalty income in particular, the sales factor was specifically designed to take into account where the costs of performance related to a taxpayer’s licensing or other disposition of business intangibles occurred, in order to apportion the receipts realized by such activities in the ordinary course of the taxpayer business. 35 ILCS 5/304(a)(3), 5/1501(21); 86 Ill. Admin. Code §100.3370(a), (b).¹³

It should be noted that the foreign royalties and dividends from foreign subsidiaries earned by Colgate-Palmolive were included in the sales factor despite the fact that they did not comprise more than 50% of the total gross receipts of the taxpayer.¹⁴

The court's reasoning in Colgate can be applied in the Taxpayer’s case. In contrast to Colgate, the standard apportionment formula today fails to represent the market for the royalty income in the Taxpayer’s case because the royalties earned from licensing of intangible property are excluded from the sales factor (i.e., the royalties do not comprise more than 50% of Taxpayer’s gross income). The lack of inclusion in the factor fails to take into account the ordinary income producing activities and expenses related to Taxpayer’s royalty income, as well as the fact the income producing activities related to the particular income at issue were not performed in Illinois. Further, Illinois administrative code specifies that income shall be included in the denominator (and numerator) of the sales factor when the income producing activity relative to the sourcing of

¹¹ *Colgate*.

¹² *Id.*

¹³ *Id.*

¹⁴ The facts of the Colgate decision detail that Colgate-Palmolive reported net sales of \$2,085,271,427 on Line 1 of its 1990 Federal return, while Colgate-Palmolive received \$247,818,837 in royalty and dividend income. Accordingly, the royalty and dividend income represented approximately 10.62% of the summation of Line 1 of its 1990 Federal return and the royalty and dividend income earned in 1990.

business income from intangible personal property can be readily identified, such as in the Taxpayer's case.¹⁵

Conclusion

Based on the above, Taxpayer requests a deviation from the Illinois' statutory apportionment method as it relates to the royalty earned from licensing of intangible personal property because the application of Illinois's tax apportionment formula produces a tax that fails to represent the activities or market in Illinois. As a result of this distortion, Taxpayer requests the use of an alternative method to fairly represent the market for Taxpayer's business income by including its royalty income on Schedule UB Step 4, Line 2 "net sales everywhere" in the amount of \$\$\$.

Alternative Position

In the event that the Department challenges or denies the Taxpayer's alternative apportionment position and refund request, the Taxpayer also requests the Department consider and apply another method to effectuate an equitable allocation and apportionment of Taxpayer's royalties.

Another method is the use of separate accounting to apportion the Taxpayer's royalties separate and apart from all other activity. Using separate accounting, Taxpayer's apportionment will fairly represent Taxpayer's activity in Illinois, as it will no longer be skewed by the inclusion of the royalties which are not fairly reflected in the apportionment formula.

Finally, yet another method to use is to include as members of the Illinois combined group all of the 80/20 companies that are excluded from the combined group under IITA 35 ILCS 5/1501(a)(27)(A) that are paying the royalties to the Taxpayer. The inclusion of the 80/20 companies would serve to include the business income of the foreign corporations, as well as include the sales of such corporations into the apportionment formula. This method will also fairly represent Taxpayer's activity in Illinois as it would have matching representation between business income and sales in the sales factor.

Other Amended Return Items

Additionally, this IL-1120-X incorporates an error in the EDA-25 IL-1120 Auditor's Report (Audit ID - XXX) for this tax period ending June 30, 20XX, which improperly excluded the federal taxable income of COMPANY 1. (FEIN: XXXXX). The return is being amended to include COMPANY 1's federal taxable income into Line 1, Step 3.

¹⁵ 86 Ill. Admin. Code §100.3380(c)(3).

RULING

Section 304(a) of the Illinois Income Tax Act ("IITA" 35 ILCS 5/304) provides that when a nonresident derives business income from Illinois and one or more other states, such income shall be apportioned to Illinois by multiplying the income by the taxpayer's apportionment factor. For taxable years ending on and after December 31, 1998, except in the case of an insurance company, financial organization, transportation company, or federally regulated exchange, the apportionment factor is equal to the sales factor. IITA Section 304(a)(3) defines the sales factor as a fraction, the numerator of which is the total sales of the person in Illinois during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year.

For taxable years ending on or after December 31, 1999, IITA Section 304(a)(3)(B-2) provides that gross receipts from the license, sale, or other disposition of patents, copyrights, trademarks, and similar items of intangible personal property may be included in the sales factor only if gross receipts from the license, sale, or other disposition of such items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the two immediately preceding tax years, and provided that when a taxpayer is a member of a unitary business group, such determination shall be made on the basis of the gross receipts of the entire unitary business group. If not excluded from the sales factor under the 50% B-2 test, these receipts are sourced to Illinois according to IITA Section 304(a)(3)(B-1).

Section 304(f) of the IITA states:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not, for taxable years ending before December 31, 2008, fairly represent the extent of a person's business activity in this State, or, for taxable years ending on or after December 31, 2008, fairly represent the market for the person's goods, services, or other sources of business income, the person may petition for, or the Director may, without petition, permit or require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate Accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities or market in this State;
or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Department Regulations Section 100.3380(a)(2) states:

The Director has determined that, in the instances described in this Section, the apportionment provisions provided in IITA Section 304(a) through (e) and (h) do not fairly represent the extent of a person's business activity or market within Illinois. For tax years beginning on or after the effective date of a rulemaking amending this Section to prescribe a specific method of apportioning business income, all nonresident taxpayers shall apportion their business income employing that method in order to properly apportion their business income to Illinois. Taxpayers whose business activity or market within Illinois is not fairly represented by a method prescribed in this Section and who want to use another method for a tax year beginning after the effective date of the rulemaking adopting that method may obtain permission to use that other method by filing a petition under Section 100.3390. For tax years beginning prior to the effective date of the rulemaking adopting a method of apportioning business income, the Department will not require a taxpayer to adopt that method; provided, however, if any taxpayer has used that method for any of those tax years, the taxpayer must continue to use that method for that tax year. Moreover, a taxpayer may file a petition under Section 100.3390 to use a method of apportionment prescribed in this Section for any open tax year beginning prior to the effective date of the rulemaking adopting that method, and that petition shall be granted in the absence of facts showing that that method will not fairly represent the extent of a person's business activity or market in Illinois.

Taxpayers who wish to use an alternative method of apportionment under these provisions are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390. Subsection (c) of that regulation provides:

A departure from the required apportionment method is allowed only when those methods do not accurately and fairly reflect business activity in Illinois (for taxable years ending before December 31, 2008) or market in Illinois (for taxable years ending on or after December 31, 2008). An alternative apportionment method may not be invoked, either by the Director or by a taxpayer, merely because it reaches a different apportionment percentage than the required statutory formula. However, if the application of the statutory formula will lead to a grossly distorted result in a particular case, a fair and accurate alternative method is appropriate. The party (the Director or the taxpayer) seeking to utilize an alternative apportionment method has the burden of going forward with the evidence and proving by clear and convincing evidence that the statutory formula results in the taxation of extraterritorial values or operates unreasonably and arbitrarily in attributing to Illinois a percentage of income that is out of all proportion to the business transacted in this State (for taxable years ending before December 31, 2008) or the market

for the taxpayer's goods, services or other sources of business income in this State (for taxable years ending on or after December 31, 2008). In addition, the party seeking to use an alternative apportionment formula must go forward with the evidence and prove that the proposed alternative apportionment method fairly and accurately apportions income to Illinois based upon business activity in this State (for taxable years ending before December 31, 2008) or the market for the taxpayer's goods, services or other sources of business income in this State (for taxable years ending on or after December 31, 2008).

Your petition for alternative apportionment indicates that gross receipts from the foreign royalties are not more than 50% of Taxpayer's total gross receipts for the tax year ended June 30, 20XX and are therefore excluded from the sales factor under IITA Section 304(a)(3)(B-2). Your petition asserts that the royalties earned by Taxpayer are included in business income subject to formula apportionment in Illinois but the failure to include such receipts in the sales factor results in an Illinois tax liability that is distortive and does not fairly represent the market for Taxpayer's business income in the State. The primary basis for this assertion is that for fiscal years ending June 30, 20XX – June 30, 20XX, the statutory apportionment formula fails to take into account that the gross receipts from the foreign royalties earned by Taxpayer represents %%% of total gross income, while the royalty income represents %%% of Illinois combined unitary income.

The facts stated in your petition are not sufficient to satisfy the burden set forth in Ill. Adm. Code Section 100.3390(c). As indicated above, for taxable years ending on or after December 31, 2008, alternative apportionment under IITA Section 304(f) is appropriate in cases where the allocation and apportionment provisions under IITA Sections 304(a) through (e) do not fairly represent the market for the taxpayer's goods, services, or other sources of business income. In this case, your petition does not meet the regulatory requirement and cannot be granted at this time. Your request merely states that due to the statutory exclusion of foreign royalty from the sales factor pursuant to IITA Section 304(a)(3)(B-2), an alternative apportionment formula would more accurately represent Taxpayer's market in Illinois. An alternative apportionment method may not be invoked, either by the Department or a by a taxpayer, merely because it reaches a different apportionment percentage than the required statutory formula.

In this case, IITA Section 304(a)(3)(B-2) and 86 Ill. Adm. Code Section 100.3370(a)(2)(F) provide that for taxable years ending on or after December 31, 1999, gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property may be included in the sales factor only if gross receipts from licenses, sales, or other dispositions of these items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the two

immediately preceding tax years. Exclusion of such receipts from the sales factor thereby prevents distortion of the sales factor that would otherwise occur.

Section 304(f) relief is proper where the income allocated to the State by the otherwise applicable statutory formula is unfairly disproportionate to the business activity conducted in the State. There is nothing inherently distortive or unfair in excluding from the sales factor those royalties that do not comprise more than 50% of gross income gross receipts from royalties earned from the licensing of intangible property based on the activities of the taxpayer.

In addition, your proposed alternative methods fail to demonstrate that the statutory method would lead to a distorted result in attributing to Illinois a percentage of income that is out of all proportion to the market for the taxpayer's goods, services, or other sources of business income in this State. See *Lakehead Pipe Line Co. v. Dep't of Rev.*, 192 Ill. App. 3d 756 (1st Dist. 1989); *Miami Corp. v. Dep't of Rev.*, 212 Ill. App. 3d 702 (1st Dist. 1991); *AT&T Teleholdings, Inc. v. Dep't of Rev.*, 978 N.E.2d 371 (Ill. App. Ct. 2012). Merely indicating separate accounting or inclusion of 80/20 companies in the combined group would effectuate equitable allocation and apportionment of Taxpayer's royalties, without any explanation of why these methods are more accurate than formulary apportionment, is insufficient to meet the burden of proof imposed by 86 Ill. Adm. Code Section 100.3390(c) on taxpayers requesting permission to use an alternative method of apportionment. As a unitary business enterprise, there are intercompany transactions that are not reflected in your calculations. Separating companies from their unitary group often creates more distortions due to intercompany pricing issues.

This conclusion is also warranted by a review of Illinois cases involving a taxpayer's request to invoke an alternative apportionment method pursuant to IITA Section 304(f). For example, in *Miami Corp. v. Dep't of Rev.*, which you cite as an authority in support of your petition to use an alternative formula, the Illinois appellate court affirmed the circuit court's decision that the Illinois three-factor formula, as applied by the Department in that case, grossly distorted the amount of income to be apportioned to Illinois. The facts of that case, however, are distinguishable from the facts presented in your petition, and distinguishable in a way that warrants a different result. The primary difference is the fact that the intangible income at issue in *Miami Corp.* arose from the taxpayer's ownership of real estate situated in other states, and the fact that Miami Corp. had no such intangible property rights regarding land owned in Illinois. Both the appellate and the trial court in *Miami Corp.* relied to a great degree on the reasoning of the Alaska supreme court in *Atlantic Richfield Co. v. Alaska*, 705 P.2d 418 (Alaska 1985) *app. dism'd*, 474 U.S. 1043, 106 S.Ct. 74, 88 L.ed.2d 754 (1985). Specifically, the Alaska supreme court wrote that:

A unique characteristic of unitary oil and gas businesses is that the major income-producing element is the value of the oil and gas reserves in the ground. While this element can be readily identified, it is not recognized under traditional formula apportionment methods. *** [S]eparate accounting, not formula apportionment, is the prevailing method throughout the United States for reporting income for oil production.

Atlantic Richfield Co., 705 P.2d at 418, 426.

Furthermore, the statutory apportionment formula has since changed from three-factor apportionment formula (property, payroll, and sales) to a one factor formula (sales). The intangibles at issue here are not like the intangible rights that ran with the land in *Miami Corp.*

Accordingly, your petition for alternative apportionment for tax year ended June 30, 20XX and for prospective tax years ending on or after June 30, 20XX cannot be granted. However, if you have additional information related to this request that was not previously submitted, you may supplement your petition and we will reconsider your request. Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. In addition, this ruling only addresses your alternative apportionment petition and makes no decision on the amended return's refund claim to correct an error to include COMPANY 1's federal taxable income into the returns.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Jennifer Uhles
Associate Counsel (Income Tax)