

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKETS 0-315-797-504 AND
[Redacted]	)	0-738-547-712
	)	
	)	DECISION
_____ Petitioner	)	

**I. INTRODUCTION**

**A. Procedural Background and Case History.**

On March 31, 2015, the staff of the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice-1) to [Redacted] (Petitioner).<sup>1</sup> In Notice-1, the Bureau asserts that Petitioner owes additional corporate income tax and interest in the total amount of \$132,592 for taxable years ending January 1, 2011, through December 29, 2012.<sup>2</sup> Petitioner filed a timely petition for redetermination (Petition-1) dated May 29, 2015. Petitioner participated by telephone in an informal hearing on May 18, 2017.

Following the May 2017 informal hearing, on October 10, 2017, the Bureau issued a Notice of Deficiency Determination (Notice-2) to [Redacted] (Petitioner).<sup>3</sup> In Notice-2, the Bureau asserts that Petitioner owes additional corporate income tax and interest in the total amount of \$344,935 for taxable years ending December 28, 2013, through

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<sup>1</sup> Petitioner includes each Idaho taxpayer reflected on Schedules 1100.1 through 1100.3 attached to Notice-1.

<sup>2</sup> For purposes of this Decision, the taxable year ending as shown on Petitioner's Idaho return will be used instead of the taxable year ending as shown in Notice-1:

Taxable Year - Notice of Deficiency	Taxable Year - Petitioner's Return
December 31, 2010	January 1, 2011
December 31, 2011	December 31, 2011
December 29, 2012	December 29, 2012

<sup>3</sup> Petitioner includes each Idaho taxpayer reflected on Schedules 1100.1 through 1100.3 attached to Notice-2.

January 2, 2016.<sup>4</sup> Petitioner filed a timely petition for redetermination (Petition-2) dated November 27, 2017. Petitioner participated by telephone in an informal hearing on October 22, 2018.

Since the primary issues in Petition-1 and Petition-2 are the same, Petitioner and the Commission agreed to combine Petition-1 and Petition-2 for purposes of the redetermination.

Unless otherwise noted, Notice refers to both Notice-1 and Notice-2. Similarly, Petition refers to Petition-1 and Petition-2. The total additional tax and interest the Bureau asserts in the Notice for taxable years ending January 1, 2011, through January 2, 2016 is \$477,527.

[Redacted] is the parent of an affiliated group of corporations that file a federal consolidated income tax return for each of the years. Included within the consolidated group are [Redacted]

all of which have Idaho activity. For the remainder of this decision, the following Legend is used:

<b>Legend</b>	<b>Refers to:</b>
Affiliate-P	[Redacted]
Affiliate-M	[Redacted]
Affiliate-W	[Redacted]
The Bank	[Redacted]
In-store Structure	[Redacted]
State-X	[Redacted]
Product-M	[Redacted]

Unless otherwise indicated, all Idaho Code section references are to the Idaho Code relating to the tax years at-issue and all Idaho rule references are to the Idaho Department of

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<sup>4</sup> For purposes of this Decision, the taxable year ending as shown on the Petitioner’s Idaho return will be used instead of the taxable year ending as shown in Notice-1:

Taxable Year Per Notice of Deficiency	Taxable Year Per Petitioner’s Return
December 31, 2013	December 28, 2013
December 31, 2014	December 27, 2014
December 31, 2015	January 2, 2016

Administration's 2017 version of the Idaho Income Tax Administrative rules.

**B. Summary of Audited Issues.**

The Bureau adjusted Petitioner's tax liability in a number of ways, many of which have not been protested by Petitioner.

*1. The Bureau Determined that Idaho had Jurisdiction to Tax Affiliate-M.*

The Bureau asserted that Affiliate-M was subject to the Idaho corporate income tax. In responding to the Notice, Petitioner argues that Affiliate-M is not subject to the Idaho income tax. It contends that it is protected by Public Law 86-272 (P.L. 86-272). As discussed in more detail below, the Commission finds there to be insufficient evidence to conclude that Affiliate-M is subject to the Idaho corporate income tax.

*2. The Bureau Determined that Idaho had Jurisdiction to Tax the Bank.*

The Bureau determined that the Bank was subject to the Idaho corporate income tax because of Idaho activities conducted on its behalf by employees of Affiliate-W.

Petitioner argues that the Bank did not have any activity in Idaho and is not taxable in Idaho. As discussed in more detail below, the Commission finds that Idaho has jurisdiction to tax the Bank.

*3. The Bureau Adjusted Apportionable Income for Some of the Taxable Years.*

The Bureau accepted Petitioner's calculation of apportionable income for taxable years ending January 1, 2011, and December 31, 2011. The Bureau adjusted apportionable income for taxable year ending December 29, 2012, for federal audit adjustments. The Bureau adjusted apportionable income for taxable years ending December 28, 2013, December 27, 2014, and January 2, 2016, increasing apportionable income to include a small amount of federal tax-exempt interest income. Since Petitioner did not protest the Bureau's adjustments to apportionable

income, the Commission affirms the Bureau's calculation of apportionable income.<sup>5</sup>

4. *The Bureau Adjusted Petitioner's Apportionment Factor.*

Idaho Payroll Numerator: The Bureau accepted Petitioner's Idaho payroll factor for taxable years ending January 1, 2011, December 28, 2013, December 27, 2014, and January 2, 2016. The Bureau adjusted Petitioner's Idaho payroll to agree with wages reported to the Idaho Department of Labor for taxable years ending December 31, 2011, and December 29, 2012. Since Petitioner did not protest the Bureau's adjustments to Idaho payroll, the Commission affirms the Bureau's calculation of Idaho payroll.<sup>6</sup>

Everywhere Payroll Denominator: The Bureau accepted Petitioner's everywhere payroll for taxable years ending January 1, 2011, December 28, 2013, December 27, 2014, and January 2, 2016. For taxable years ending December 31, 2011, and December 29, 2012, the Bureau adjusted Petitioner's everywhere payroll to include the same increase the Bureau made to the Idaho payroll. Since Petitioner did not protest the Bureau's adjustments to everywhere payroll, the Commission affirms the Bureau's calculation of everywhere payroll.<sup>7</sup>

Idaho Property Factor: The Bureau accepted Petitioner's Idaho property for taxable years ending January 1, 2011, and December 28, 2013. Petitioner notified the Bureau that it had understated Idaho rent expense reported on the Idaho corporate returns, beginning with taxable year December 29, 2012, due to a computer coding error. For taxable years ending December 28, 2013, December 27, 2014, and January 2, 2016, the Bureau included the correction in its Notice-2. As discussed below, the Commission finds that a correction is also necessary to Notice-1 for taxable year ending December 29, 2012.<sup>8</sup>

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<sup>5</sup> See **Table 1** at the end of this decision.

<sup>6</sup> See **Table 2** at the end of this decision.

<sup>7</sup> See **Table 3** at the end of this decision.

<sup>8</sup> See **Table 4** at the end of this decision.

Everywhere-Property Factor: Petitioner amended its Idaho income tax return for taxable years ending January 1, 2011 and December 31, 2011, to include the Bank's credit card receivables in the everywhere-property factor. Additionally, when filing its Idaho income tax returns for taxable years ending December 29, 2012, through January 2, 2016, Petitioner included the Bank's credit card receivables in everywhere property.

Petitioner maintains that the credit card receivables are included in everywhere property since Idaho adopted the Multistate Tax Commission's (MTC) "Multistate Tax Commission Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" (Financial Formula) and the Bank falls within the Commission's definition of "financial institution." The Bureau disagreed, asserting that at least 50 percent of the combined group's activity must be financial institution activity to qualify for the Financial Formula and that since the combined group is overwhelmingly a retail operation, Petitioner cannot avail itself of the Financial Formula. The Bureau removed the credit card receivables from its calculation of the everywhere-property denominator.<sup>9</sup> As discussed in more detail below, the Commission finds that Petitioner was required to use the Financial Formula and must include the credit card receivables in the property factor.

Idaho Sales Factor: Affiliate-W, Affiliate-M, and the Bank had Idaho sales. The Bureau adjusted the Idaho sales factor as follows:<sup>10</sup>

- Affiliate-W: The Bureau accepted Affiliate-W's Idaho sales factor except for taxable year ending December 31, 2011. For taxable year ending December 31, 2011, the Bureau reduced Affiliate-W's Idaho sales by \$1,117,410. Since Petitioner did not protest the Bureau's adjustments to Affiliate-W's Idaho sales, the Commission affirms the Bureau's calculation of

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<sup>9</sup> See **Table 5** at the end of this decision.

<sup>10</sup> See **Table 6** at the end of this decision.

Affiliate-W's Idaho sales.

- **Affiliate-M:** The Bureau adjusted Affiliate-M's numerator for taxable years ending December 31, 2011, and December 29, 2012. Because the Commission does not assert that Affiliate-M is subject to the Idaho corporate income tax, the Commission eliminates the Notice's Idaho sales numerator amount for Affiliate-M.

- **The Bank:** The Bureau concluded that the Bank should have assigned to Idaho the receipts from interest income and other income it received from Idaho customers. Petitioner disagreed, maintaining that since Idaho did not have jurisdiction to tax the Bank, the Commission should not assign the Bank's Idaho customer receipts as Idaho receipts. As discussed later in this decision, the Commission finds that the Bank is required to report the interest income and fee income from Idaho customers as an Idaho receipt for purposes of the Idaho sales factor calculation.

Everywhere Sales Factor: The Bureau adjusted Petitioner's total everywhere sales for taxable years ending January 1, 2011, through January 2, 2016. Since Petitioner did not protest the everywhere sales factor adjustments, the Commission affirms the Bureau's calculation of the Everywhere Sales Factor.<sup>11</sup>

5. *The Bureau Adjusted the Amount of Idaho Investment Tax Credit (ITC).*

The Bureau adjusted the amount of Idaho investment tax credit (ITC) for such items as credit claimed on buildings, buildings components, services, or claimed in the wrong taxable year. Additionally, the Bureau identified a few assets not held for the required holding period, which resulted in recapture of ITC. Since Petitioner did not protest the ITC adjustments or ITC recapture, the Commission affirms the Bureau's calculations.<sup>12</sup>

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<sup>11</sup> See **Table 7** at the end of this decision.

<sup>12</sup> See **Table 8** at the end of this decision.

6. *The Bureau Increased the Amount of Permanent Building Fund (PBF) Tax and Minimum tax relating to Affiliate-M.*

Idaho law provides for an additional \$10 tax when a person is required to file an income tax return (commonly referred to as the Permanent Building Fund Tax) and sets the Idaho minimum corporate income tax at \$20. The Bureau increased the PBF tax because it found Affiliate-M taxable in Idaho. The Commission finds that Affiliate-M is not taxable in Idaho, not required to file an Idaho income tax return, and not subject to the \$10 PBF tax or \$20 minimum tax.<sup>13</sup>

**C. Summary of Commission's Findings in this Decision.**

Having reviewed the Notice, audit file, Petition, and the Bureau's response to the Petition, the Commission herein determines Petitioner's tax liability. For Affiliate-M, the Commission finds that:

A. There is insufficient evidence to conclude that Affiliate-M was subject to the Idaho income tax;

B. Affiliate-M's receipts are excluded from the Idaho numerator of the apportionment formula as shown in Notice-1; and

C. The \$10 PBF tax and the \$20 Idaho corporate minimum tax does not apply.

And for the Bank, the Commission finds that:

D. The Bank was transacting business within Idaho and was required to file an Idaho income tax return;

E. The Bank was entitled to include intangibles in the property factor under the Financial Formula; and

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<sup>13</sup> See **Tables 9 and 10** at the end of this decision.

F. The Bank was required to report the interest income and fee income from Idaho customers as an Idaho receipt for purposes of the Idaho sales factor calculation.

And for Affiliate-W, the Commission finds that:

G. Affiliate-W's capitalized rent included in the Idaho property factor numerator for taxable year December 29, 2012, is adjusted for the computer coding error.

And for the Bank and Affiliate-W, the Commission finds that:

H. Both Idaho taxpayers are required to use the same total everywhere-property factor which includes the Bank's credit card receivables.

## II. GENERAL STATEMENT OF LAW

Idaho law defines "taxpayer" as any person subject to a tax imposed by this act or required by the provisions of this act to file an income tax return, report income or pay a tax.<sup>14</sup> Person means an individual, a trust or estate, a partnership, an association, a limited liability company or a corporation.<sup>15</sup> The term "corporation" includes any corporation formed under the laws of any government, any common law trust and any association of whatever kind other than a partnership. "Corporation" also includes any entity classified or taxed as a corporation pursuant to section 7701 or 7704 of the Internal Revenue Code and the regulations of the U.S. Department of the Treasury issued thereunder.<sup>16</sup>

Every corporation which is transacting business in Idaho, authorized to transact business in Idaho or having income attributable to Idaho, unless exempt from the tax imposed by the Idaho Income Tax Act, is required to file an Idaho return.<sup>17</sup> "Transacting business" shall include owning or leasing, whether as lessor or lessee, of any property, including real and personal property,

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<sup>14</sup> Idaho Code § 63-3009.

<sup>15</sup> Idaho Code § 63-3005.

<sup>16</sup> Idaho Code § 63-3006.

<sup>17</sup> Idaho Code § 63-3030(a)(3).

located in this state, or engaging in or the transacting of any activity in this state, for the purpose of, or resulting in, economic or pecuniary gain or profit.<sup>18</sup>

A corporation required to file an Idaho income tax return and that is a member of a combined group, files an Idaho corporate income tax return based upon a combined report.<sup>19</sup> The use of the combined report is restricted to C corporations.<sup>20</sup>

A combined group refers to a group of corporations that comprise a unitary business and are included in a combined report.<sup>21</sup> A combined report refers to the computational filing method used by a unitary business conducted by a group of corporations wherever incorporated rather than a single corporation.<sup>22</sup> Use of the combined report does not disregard the separate corporate identities of the members of the unitary group.<sup>23</sup> The combined report is simply the computation, by the formula apportionment method, of the unitary business income reportable to Idaho by the separate corporate members of the unitary group.<sup>24</sup>

A corporation required to file an Idaho income tax return using the combined report may file a separate Idaho Form 41 corporate income tax return to report its share of the unitary group's combined income or loss.<sup>25</sup> In the alternative, a unitary group of corporations may file one Idaho corporate income tax return called a "group return" for all of the corporations of the unitary group required to file an Idaho income tax return.<sup>26</sup> Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return.<sup>27</sup> However, the use of a group return

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<sup>18</sup> Idaho Code § 63-3023.

<sup>19</sup> IDAPA 35.01.01.365.01.

<sup>20</sup> IDAPA 35.01.01.360.

<sup>21</sup> IDAPA 35.01.01.325.05.

<sup>22</sup> IDAPA 35.01.01.325.06.

<sup>23</sup> Idaho Code § 63-3027(t)(1), IDAPA 35.01.01.365.01.

<sup>24</sup> IDAPA 35.01.01.325.06.; IDAPA 35.01.01.365.01.

<sup>25</sup> IDAPA 35.01.01.365.06.

<sup>26</sup> IDAPA 35.01.01.325.08.; IDAPA 35.01.01.365.06.

<sup>27</sup> IDAPA 35.01.01.325.08.

does not relieve a corporation within the group return of its obligation to satisfy the separate recognition and computational requirements set forth in the Commission's rules.<sup>28</sup>

For example, a corporation that files its own Idaho return or as part of a group return is required to pay its own Idaho tax, including any PBF, and to make a number of separate calculations, including but not limited to its:<sup>29</sup>

- 1) Share of the combined group's income subject to apportionment,
- 2) Income allocated to Idaho,
- 3) Idaho Net Operating Loss,
- 4) Idaho corporate income tax liability, and
- 5) Idaho tax credits offsetting its income tax liability.

As for the unitary business principle, the principle finds its roots in constitutional law as developed under the Commerce and Due Process Clauses. The principle is premised upon the concept that separately incorporated entities may conduct what essentially is a single business enterprise. In an economic sense, a structure consisting of multiple-entity businesses is treated no different from a similar business composed of a single corporation with several separate divisions.<sup>30</sup>

Idaho statutes implement the unitary business principle and provide that two or more corporations shall be considered a single corporation for income tax purposes, provided more than 50 percent of the voting stock of each of them is owned directly or indirectly by a common owner or owners and such treatment is necessary to accurately reflect income.<sup>31</sup> Even though a unitary

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<sup>28</sup> IDAPA 35.01.01.365.06.

<sup>29</sup> IDAPA 35.01.01.365.02.

<sup>30</sup> See generally, *Container Corporation of America v. Franchise Tax Bd.*, 463 U.S. 159, 164-169; 103 S.Ct. 2933, 2939-2943 (1983) (discussing the unitary business principle in light of the California combined reporting requirement).

<sup>31</sup> Idaho Code § 63-3027(t).

group of corporations is considered “a single corporation” for purposes of accurately reflecting the income Idaho can tax, each corporation within the combined group retains its identity and is required to report its share of the income taxed by Idaho.<sup>32</sup>

When a single corporation, or a “unitary” group of corporations, conducts business within and without Idaho, Idaho may tax an apportioned share of the business income and any nonbusiness income allocated to Idaho.<sup>33</sup> To identify the income Idaho may tax, Idaho statutes contain a formula (standard apportionment formula) for determining the portion of a corporation’s business income from multistate activity apportioned to Idaho as well as allocation rules for nonbusiness income allocated to Idaho.<sup>34</sup>

Under Idaho’s standard apportionment formula, “[a]ll business income shall be apportioned to this state . . . by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.”<sup>35</sup> For a corporation filing a combined report, the property factor is calculated by dividing the corporation’s Idaho property by the combined group’s everywhere property.<sup>36</sup> The payroll factor and sales factor are calculated in a similar manner.<sup>37</sup> Intercompany transactions are eliminated to the extent necessary to properly compute the apportionment factors of a combined group.<sup>38</sup> The apportionment factor computation may not include property, payroll, or receipts of any affiliated corporation unless its income is included in the combined report.<sup>39</sup>

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<sup>32</sup> IDAPA 35.01.01.365.01.

<sup>33</sup> *American Smelting & Ref’g Co. v. Idaho St. Tax Comm.*, 99 Idaho 924, 927, 592 P.2d 39, 42 (1979) (citations to statute omitted), rev’d on other grounds, *ASARCO Inc. v. Idaho State Tax Commission*, 458 U.S. 307 (1982); *Albertson’s, Inc. v. State, Dept. of Rev.*, 106 Idaho 810, 815 n.4, 683 P.2d 846, 851, n.4 (1984).

<sup>34</sup> Idaho Code § 63-3027(k) and Idaho Code § 63-3027(j)(1)(ii).

<sup>35</sup> Idaho Code § 63-3027(i).

<sup>36</sup> Idaho Code § 63-3027(k).

<sup>37</sup> Idaho Code § 63-3027(n), Idaho Code § 63-3027(p) and Idaho Code § 63-3027(j)(1)(ii).

<sup>38</sup> IDAPA 35.01.01.450.02.

<sup>39</sup> *Id.*

Like many other states, Idaho's three-factor standard apportionment formula, by means of the location of a business's property, payroll, and sales, approximates the extent of the business activity in a given state.<sup>40</sup> Most states that impose a tax on corporate income use some variation of the three-factor apportionment formula. Many states, including Idaho, have modified its formula so that the sales factor is double weighted.<sup>41</sup>

For taxable years beginning on or after January 1, 1998, Idaho Income Tax Administrative Rule 580 requires that financial institutions with Idaho taxable business activity apportion their income in accordance with the Financial Formula instead of standard apportionment.<sup>42</sup>

The Financial Formula provisions for apportioning the income of financial institutions contains variations from Idaho's standard apportionment formula. For example, the Financial Formula includes certain intangibles such as loans and credit card receivables in the property factor not included under Idaho's standard apportionment formula.<sup>43</sup> Additionally, the MTC's Financial Formula version has an "Appendix A" which is titled "Definition of Financial Institution."<sup>44</sup> The MTC model definition of "financial institution" was a starting point for states to decide how they wanted to define financial institutions.<sup>45</sup> As it applies to the present matter, under Idaho law, there are two versions of the definition of a financial institution that apply. Before 2012, Idaho's version of Rule 582.03 identified the same entities considered to be financial institutions as listed in the

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<sup>40</sup> *Container Corporation, supra.*

<sup>41</sup> Idaho Code § 63-3027(i)(1).

<sup>42</sup> IDAPA 35.01.01.580.01.g.

<sup>43</sup> Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions, page 11, Section 4, available at <http://www.mtc.gov/Uniformity/Project-Teams/Model-Uniform-Financial-Institutions-Appportionment>, under "Special Rule: Financial Institutions (**pre-2015 version**).” On July 29, 2015, the MTC adopted several changes to the Financial Formula that the MTC recommended states adopt. The changes had an effective date of January 1, 2016. One of the changes was to exclude loans and credit card receivables from the property factor. The Commission, as of the date of this decision, has not adopted the 2015 MTC recommended changes to the Financial Formula.

<sup>44</sup> Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions, Appendix A, available at <http://www.mtc.gov/Uniformity/Project-Teams/Model-Uniform-Financial-Institutions-Appportionment>, under "Special Rule: Financial Institutions (**pre-2015 version**).”

<sup>45</sup> *Id.*

MTC model. However, this older definition departed from the MTC model by allowing a taxpayer that otherwise met the definition of a financial institution to avoid using the Financial Formula. If a taxpayer could prove by clear and convincing evidence that it was not in substantial competition with the listed entities, then it was not required to use the formula.<sup>46</sup>

The Commission amended Rule 582 in 2012. It removed the substantial competition concept (except for one situation not applicable to this petition) and the corresponding exception. The amended Rule simply treats any entity that meets the definition of a financial institution as a financial institution.<sup>47</sup> Unlike most rule changes, the Commission determined that the change in the definition of a financial institution would be effective prospectively, starting with the 2012 taxable year.<sup>48</sup>

Because of the Commission's decision to only apply the rule change prospectively, the old definition of a financial institution applies to some of the taxable years at issue in this case. Specifically, the former definition applies to taxable years ending January 1, 2011 and December 31, 2011.

### **III. ANALYSIS AND FINDING**

#### **A. There Is Insufficient Evidence to Conclude that Affiliate-M was Subject to the Idaho Income Tax, including the Idaho Minimum Tax and Idaho PBF Tax.**

There is insufficient evidence for the Commission to conclude that Idaho may tax Affiliate-M. Affiliate-M sells Product-M (tangible personal property) to corporate businesses and government agencies.<sup>49</sup> Since Affiliate-M sells tangible personal property, P.L. 86-272 may very

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<sup>46</sup> Subsection 02 of Rule 582 of the 2012 rule describes what “financial institution” and “in substantial competition” means; which is similar to California’s definitions of “financial corporation” and “in substantial competition”. California Code of Regulations, title 18, section 23183.

<sup>47</sup> See current IDAPA 35.01.01.582.

<sup>48</sup> Idaho Administrative Bulletin January 4, 2012, Vol. 12-1, page 197, at <https://adminrules.idaho.gov/bulletin/2012/index.html>. See IDAPA 35.01.01.001.03 and .05 for additional information on application of income tax rules.

<sup>49</sup> Petition-1, page eight, item 3.

well protect Affiliate-M from the Idaho income tax.

Due to the lack of evidence that Affiliate-M—directly or indirectly through the other affiliated members of the combined group of corporations—engaged in activities exceeding the protection afforded it by P.L. 86-272, the Commission does not find Affiliate-M subject to the Idaho income tax for the taxable years at issue.

Because the Commission determined that Affiliate-M is not taxable in Idaho, the Commission modifies the Idaho sales factor numerator as shown in Table 6.<sup>50</sup>

Since a corporation protected from the Idaho income tax by P.L. 86-272 is not subject to either the \$20 minimum tax or the \$10 PBF tax,<sup>51</sup> the Commission modifies the PBF tax and minimum tax as shown in Table 9 and Table 10, respectively.<sup>52</sup>

**B. The Bank Was Transacting Business Within Idaho and Was Required to File an Idaho Income Tax Return.**

A corporation transacting business in Idaho, including a bank, is required to file an Idaho income tax return.<sup>53</sup> Idaho’s definition of “transacting business,” contained in Idaho Code § 63-3023, states:

Transacting business. Subject only to the limitations of the constitutions of the United States and of the state of Idaho, the term “transacting business” shall include owning or leasing, whether as lessor or lessee, of any property, including real and personal property, located in this state, or engaging in or the transacting of any activity in this state, for the purpose of or resulting in economic or pecuniary gain or profit.

The statutory language contains two concepts, satisfying either of which requires a finding that a corporation is “transacting business” in Idaho. First, if a corporation owns or leases any

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<sup>50</sup> See Table 6 at the end of this decision.

<sup>51</sup> IDAPA 35.01.01.300.04 and IDAPA 35.01.01.855.05.

<sup>52</sup> See **Table 9** and **Table 10** at the end of this decision.

<sup>53</sup> Idaho Code § 63-3030(a)(3).

property located in Idaho for the purpose of or resulting in economic or pecuniary gain or profit, the corporation is transacting business in Idaho. Second, if the corporation engages in or transacts any activity in Idaho for the purpose of or resulting in economic or pecuniary gain or profit, the corporation is transacting business in Idaho.

The Bureau determined that the Bank was transacting business because Affiliate-W's provided within its retail stores an In-store Structure to assist the Bank with the promotion of the Bank's credit cards. Additionally, Affiliate-W's employees assisted customers with the Bank's credit card application process, and accepted credit card payments for the Bank. The Bureau encountered one employee staffing an In-store Structure that indicated he was an employee of the Bank; which, the Bank believes was an employee of Affiliate-W simply trying to "impress or ensure a customer . . . as to his knowledge" of the Bank's credit card operations.<sup>54</sup> Petitioner disagrees that the aforementioned activities provide Idaho with the ability to subject the Bank to the Idaho corporate income tax.

The Commission summarizes Petitioner's arguments as: 1) the Bank lacked a physical presence in Idaho which is required before the Bank can be taxed by Idaho, 2) Idaho law does not support the Bureau's use of "affiliate" nexus, and 3) the Bureau incorrectly applied the "*Finnigan*" concept instead of the "*Joyce*" concept when assigning Idaho receipts. The Commission responds to each as follows:

*1. Physical Presence in State is Not Required for an Entity to be Taxable in Idaho.*

The Commission finds that neither Idaho law nor federal law requires the Bank to have physical presence in Idaho before Idaho can tax the Bank.

Nothing in Idaho Code § 63-3023 (see above) requires a corporation, such as the Bank, to

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<sup>54</sup> See Petition-1, page 7, item 1.

have physical presence in Idaho before it is subject to the Idaho income tax. In 2005, the Commission published a decision setting forth its reading of the U. S. Supreme Court’s *Quill*<sup>55</sup> physical presence requirement as it relates to non-sales and use taxes.<sup>56</sup> The Commission concluded that the *Quill* physical presence test does not apply to non-sales and use tax cases. A corporation with no physical presence in Idaho could have substantial nexus with Idaho, and the nexus inquiry is not limited to just the company’s “physical contacts” within Idaho.<sup>57</sup> Further, the U. S. Supreme Court in its *Wayfair* decision discarded the “physical presence” requirement as a requirement under the Commerce Clause, thus overturning its prior decisions, including *Quill*.<sup>58</sup>

2. *The Bank has Nexus With Idaho Under an “Attributional” Nexus Concept—Not an “Affiliate” Nexus Concept.*

While the Bureau used the word “affiliate,” the Bureau did not find that Petitioner has nexus in Idaho just because it is affiliated with a business that has nexus in Idaho. Instead, the Bureau applied the “attributional” nexus concept defined in the United States Supreme Court decisions *Scripto Inc.* (brokers acting on behalf of Scripto) and *Tyler Pipe Industries* (independent sales representatives acting on behalf of Tyler Pipe Industries).<sup>59</sup>

The Commission finds that the Bureau correctly relied on the Supreme Court’s attributional nexus analysis when determining if the Bank has nexus with Idaho through the activities conducted on the Bank’s behalf by Affiliate-W employees. Idaho law requires the Bureau to consider the

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<sup>55</sup> *Quill Corp v. North Dakota*, 504 U.S. 298, 112 S.Ct 1904, 119 L.Ed.2d 91 (1992).

<sup>56</sup> See the Commission decision 17948, starting on page 15; <https://tax.idaho.gov/search-decisions.cfm>

<sup>57</sup> *Id.* at page 19.

<sup>58</sup> *South Dakota v. Wayfair*, 138 S.Ct. 2080, 2099 (2018) (For these reasons, the Court concludes that the physical presence rule of *Quill* is unsound and incorrect. The Court’s decisions in *Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), should be, and now are, overruled).

<sup>59</sup> *Scripto Inc. v. Carson*, 362 U.S. 207 (1960); *Tyler Pipe Industries v. Washington Dept. of Revenue*, 483 U.S. 232 (1987).

activities of the Bank and activities conducted in Idaho “on behalf of the Bank.”<sup>60</sup> Whether a Bank employee, an independent sales representative, or another member of the affiliated group performs the activities in Idaho on behalf of the Bank is not relevant. Rather, the critical issue is whether substantial business activities have occurred in Idaho on the Bank’s behalf, which is a principle consistent with findings of other jurisdictions and the Supreme Court.<sup>61</sup>

During the taxable years at issue, the Bank was a special-purpose state-chartered credit-card bank regulated by the Federal Depository Insurance Corporation (FDIC) and incorporated outside of Idaho.<sup>62</sup> Petitioner states in Petition-1 that the Bank markets its credit cards in Idaho through inbound telemarketing calls, catalogs, the Internet, and [Affiliate-W’s] retail stores. In addition, Petitioner states Affiliate-W’s Idaho retail stores contain an In-store Structure dedicated to providing information regarding the Bank’s credit card program, staff the In-store Structure, assist customers with the Bank’s credit card application, call the Bank to seek approval over the phone for the credit card applicant, and provide a card to the customer, if approved.<sup>63</sup>

There can be little doubt that the Bank is transacting business within Idaho and had substantial nexus with Idaho for the taxable year’s at issue given the multiple activities conducted in Idaho on behalf of the Bank by Affiliate-W’s employees. The Commission finds that the Bank is subject to the Idaho corporate income tax.

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<sup>60</sup> IDAPA 35.01.01.365.04.

<sup>61</sup> *Arco Bldg. Systems, Inc. v. Chumley*, 209 S.W.3d 63,74 (2006), citing *America Online, Inc. v. Johnson*, No. M2001–00927–COA–R3–CV, 2002 WL 1751434 at \*3, (Tenn.Ct.App. July 30, 2002) “a substantial nexus may be established by activities carried on within the state *by affiliates and independent contractors*,” and the fact that the out-of-state seller owns no real or personal property in the state and has no in-state employees or place of business is therefore not dispositive. See also *Tyler Pipe Indus., Inc. v. Wash. State Dep’t of Revenue*, 483 U.S. 232, 250, 107 S.Ct. 2810, 2821 (1987) (“As the Washington Supreme Court determined, ‘the crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer’s ability to establish and maintain a market in this state . . . .’”). See also *State v. Quantex Mirosystems, Inc.*, 809 So.2d 246, 251 (La. Ct. App. 2001) (“the crucial factor governing nexus is whether the activities performed in the taxing state on behalf of the taxpayer are significantly associated with the taxpayer’s ability to establish and maintain a market in the taxing state.”)

<sup>62</sup> Petition-1, page 3.

<sup>63</sup> Petition-1, page 7, item 1.

3. *The Bureau applied the Joyce rule when it determined the Bank's apportionable income.*

Petitioner correctly asserted that the Commission applies the Joyce rule when it comes to determining the amount of income apportioned to Idaho. Idaho law states:

When a corporation's activities conducted in a state are within the protection of Public Law 86-272, the principle established in Appeal of Joyce, Inc., California State Board of Equalization, November 23, 1966, commonly known as the Joyce Rule, shall apply. Therefore, only the activities conducted by or on behalf of the corporation shall be considered for determining "throwback sales."<sup>64</sup>

In short, the *Joyce* rule requires that, for purposes of determining receipts included in the sales factor numerator, Idaho will generally not include a corporation's Idaho receipts in the calculation of the Idaho sales factor percentage if that corporation does not have nexus with Idaho or has nexus but is protected by P.L. 86-272.

In contrast, the *Finnegan* rule determines which receipts are included in the sales factor numerator differently. If any one member of the group has nexus with the state, the state will include receipts from group members even if the individual member has no nexus with the state or is protected by P.L. 86-272.

In accordance with Idaho statute the Bureau applied the *Joyce* rule, not the *Finnegan* rule. After finding the Bank subject to the Idaho income tax, the Bureau included interest and fees received by the Bank from Idaho customers in the Bank's Idaho sales factor numerator to determine the Bank's apportioned share of the unitary group's apportionable income taxable by Idaho and the amount of the Bank's Idaho tax liability. Because the Bureau used the Bank's own tax attributes in the calculation of the Bank's Idaho sales factor numerator to determine the Bank's apportioned share of income, it applied the *Joyce* rule.

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<sup>64</sup> IDAPA 35.01.01.365.05.

The Commission finds that the Bureau correctly used the *Joyce* rule and not the “*Finnigan* Rule” as argued by Petitioner. Later in this decision, the Commission will address the authority for including Idaho interest income and customer fees associated with the Bank’s credit card receivables, in the Bank’s Idaho sales factor numerator.

**C. The Bank Was Required to Include Intangibles in the Property Factor for All of the Taxable Year’s at Issue.**

As a financial institution, the Bank was required to use the Financial Formula when determining its Idaho apportionment factors. The Financial Formula is a special apportionment formula that financial institutions are required to use when apportioning income. This formula includes intangible assets in the taxpayer’s property factor, a category of asset typically excluded under standard apportionment.

In 1998, Idaho adopted the MTC’s Financial Formula Model. Section 1(a) of the MTC’s Financial Formula (Section 1(a)) states:

Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this [Act].<sup>65</sup>

MTC’s Financial Formula (Section 1(a))

Section 1(a) sets forth the requirements a taxpayer must satisfy before they may apply the Financial Formula: 1) the taxpayer must be a financial institution; 2) the taxpayer must have taxable business activity within and without Idaho; and 3) other provisions of Idaho law do not prevent the taxpayer from applying the Financial Formula.

The definition of a financial institution is found in Idaho’s Income Tax Administrative

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<sup>65</sup> “Act” when used in the Financial Formula means the Idaho Income Tax Act. IDAPA 35.01.01.582.04. “This State” as used in the Financial Formula means Idaho. IDAPA 35.01.01.581.04.

Rules. This definition changed during the taxable years at issue in this case.<sup>66</sup> For taxable years ending January 1, 2011, and December 31, 2011, Rule 582.02 provided:

For purposes of Section 2(h) of the “Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions” the term financial institution means a person that predominantly deals in money or moneyed capital in substantial competition with the business of national banks.<sup>67</sup>

This version of Idaho’s Income Tax Administrative Rules also included a list of entities that were presumed to be a financial institution in Rule 582.03. This list included “any bank or thrift institution incorporated under the laws of any state.”

For taxable years ending December 29, 2012, through January 2, 2016, Rule 582.02 was repealed and replaced with the list of entities contained in former Rule 582.03.<sup>68</sup> The primary effect of this amendment was to make the definition of financial institution more concrete. Under the former rule, an entity was required to both “deal in money or money capital” and be “in substantial competition with the business of national banks” before it met the definition of a financial institution. Under the current definition, an entity only needs to be one of the entities listed in Rule 582.02.

For the year’s at-issue, the Bank was a state-chartered credit card bank. The Comptroller of the Currency initially supervised the Bank, originally established as a national association, with supervision subsequently falling under the FDIC due to the Bank’s institution class change to a state “Insured Commercial Bank.”<sup>69</sup> Later on, the Bank changed its organization type to a credit card bank.<sup>70</sup>

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<sup>66</sup> Typically, a rule—even one that has been amended—is applied to all open years. In this case, however, the Tax Commission determined that it would only apply the changed definition of “financial institution” on a prospective basis. See IDAPA 35.01.01.001.03 and .05 for additional information on application of income tax rules.

<sup>67</sup> IDAPA 35.01.01.582.02. (2011).

<sup>68</sup> IDAPA 35.01.01.582.02.

<sup>69</sup> See [Redacted]

<sup>70</sup> *Id.*

As a credit-card bank, the Bank engages only in credit-card operations, does not accept demand deposits, does not accept deposits of less than \$100,000, and otherwise conforms to the requirements of section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (“BHC Act”).<sup>71</sup> Thus, the Bank is not a “bank” for purposes of the BHC Act and a bank holding company does not own the Bank.<sup>72</sup> Although the Bank is not a bank for purposes of the BHC Act, it is a bank for purposes of section 44 of the Federal Deposit Insurance Act and the Bank Merger Act.<sup>73</sup>

The Commission finds that the Bank meets the definitions of financial institution found in the current and former rules. The Bank satisfies the current definition as it is “a bank or thrift institution incorporated or organized under the laws of any state.”<sup>74</sup> Under the former definition, the Bank satisfies the definition because it “predominantly deals in money or moneyed capital in substantial competition with the business of national banks” and was “a bank or thrift institution.”<sup>75</sup>

The Commission additionally finds that the Bank meets all three requirements set forth in Section 1(a) of the Financial Formula: 1) it is a financial institution; 2) it conducts taxable business activity within and without Idaho; and 3) no other provisions of Idaho law prevent the Bank from applying the Financial Formula. As such, the Bank is required to use the Financial Formula to determine its apportionment factor.

*1. The Definition of a Financial Institution is Determined at the Individual Entity Level Not the Combined Group Level.*

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<sup>71</sup> 12 U.S.C. § 1841(c)(2)(F).

<sup>72</sup> [Redacted]

<sup>73</sup> *Id.* at page 4, note 11.

<sup>74</sup> IDAPA 35.01.01.582.02.d.

<sup>75</sup> IDAPA 35.01.01.582.02 and .03 (2011).

Petitioner and the Bureau have both made arguments about the extent to which the Financial Formula applies to other members of Petitioner’s unitary group. Petitioner argues that each member of the unitary group should be able to use the Financial Formula. The Bureau argues that no member of the unitary group—including the Bank—should be allowed to use the Financial Formula. The Bureau, citing prior Commission decisions,<sup>76</sup> took the position that the Financial Formula is not available to Petitioner since financial activity did not represent more than 50 percent of the gross income of the unitary group.

At its core, the Bureau and Petitioner disagree over when Idaho law requires a unitary group to be treated as if the group is a single corporation or if the corporations within the unitary group retain their separate corporate identities when calculating Idaho taxable income under combined reporting.<sup>77</sup>

Most of the time, Idaho law requires a unitary group to determine a tax attribute at the individual-entity level. For example, taxpayers determine nexus, throwback sales, the amount of an Idaho net operating loss, and Idaho net operating loss carryover or carryback on an entity-by-entity basis.<sup>78</sup> However, sometimes Idaho law requires a unitary group to determine a tax attribute at the group level. As an example, the interest offset calculation is computed at the combined group level, not within each corporate entity.<sup>79</sup> In this case, the dispute centers around the definition of a financial institution.

Nowhere in Idaho’s Rule 582 (pre-2012 or post-2011) definition of a financial institution or in the language of the Financial Formula itself is there a requirement that more than 50 percent of a unitary group of corporations activity be from financial activity in order to qualify as a

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<sup>76</sup> Dockets 19722, 22105, and 22875; <https://tax.idaho.gov/search-decisions.cfm>

<sup>77</sup> Idaho Code § 63-3027(t).

<sup>78</sup> IDAPA 35.01.01.365.04; IDAPA 35.01.01.365.05; IDAPA 35.01.01.200.01 and IDAPA 35.01.01.201.04.a.

<sup>79</sup> IDAPA 35.01.01.115.04.

financial institution. Nor do any of the terms used lead the Commission to conclude that they refer to the unitary group of corporations. Rule 582 refers to “a taxpayer,” “a corporation,” “any corporation,” “a person,” “a bank,” “any agency,” or “other business entity.” Idaho defines taxpayer as “**any person** subject to a tax imposed by this act or required by the provisions of this act to file an income tax return, report income or pay a tax.”<sup>80</sup> The Financial Formula’s definition of person refers to “corporation.”<sup>81</sup> Nowhere in Rule 582 is “combined group” or “all members of a unitary group” used as part of the definition of a Financial Institution.<sup>82</sup> Accordingly, the Commission finds that for purposes of what constitutes a financial institution, when dealing with a combined group, Rule 582 requires the Commission apply the financial institution definition at the individual corporation level not at the combined group level.

Because, as previously discussed, the Bank satisfies the Financial Formula requirements, the Bank is required to use the Financial Formula when determining its apportionable income.

Since Affiliate-W is not a financial institution, it cannot include its intangibles in the property factor numerator or denominator. However, Idaho law requires that for purposes of combined reporting, “the property . . . of all corporations, wherever incorporated, which are included in the combined group” is taken into consideration for purposes of calculating the Idaho apportionment percentage.<sup>83</sup> Therefore, the Bank and Affiliate-W must use the same shared property factor denominator—which includes the Bank’s credit card receivables in the denominator—when calculating their respective Idaho apportionment factor.

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<sup>80</sup> Idaho Code § 63-3009.

<sup>81</sup> Financial Formula, Section 2.(n). The Financial Formula’s definition of person is nearly identical to the definition of person under the Idaho Code § 63-3005, which lists “a corporation” not a unitary group of corporations within its definition.

<sup>82</sup> For example, in the Idaho Small employer Incentive Act of 2005, for purposes of certain provisions of that Act, the Idaho legislature broadened the Idaho Code § 63-3009 definition of “taxpayer” to not only include a “single taxpayer” but also “all members of the unitary group includable in a combined report.” Idaho Code § 63-4402(k).

<sup>83</sup> Idaho Code § 63-3027(j)(1)(ii).

2. *The Prior Decisions Cited by the Bureau are Substantially Different from the Present Matter.*

A published Commission decision shall serve as precedent for the Commission in future protest determinations unless information excised, court decisions, changes in the Idaho Code, or changes in applicable administrative rules overrule, supersede, modify, distinguish, or otherwise make inapplicable the written decision of the Commission.<sup>84</sup> Additionally, the Commission may issue a decision overturning a prior Commission decision that it finds is manifestly wrong, as the prior decision has proven over time to be unjust or unwise, or the subsequent decision is necessary to vindicate the plain, obvious principles of law and to remedy continued injustice.<sup>85</sup>

In its Notice, the Bureau cited three Commission decisions as authority for its position that the Bank cannot use the Financial Formula: Dockets 19722, 22105, and 22875.<sup>86</sup> Because the Commission's analysis contained within Docket 22105 and Docket 22875 primarily interprets former Rule 582's "substantial competition" exception—an exception not applicable to the case at hand—these dockets are not relevant. The Commission will now consider its published decision in Docket 19722.

Docket 19722 issued in August 2007, contains two issues: unity between the financial entities and non-financial entities and a request to treat the finance entities as a financial institution.<sup>87</sup> The Commission ruled that the finance entities and the non-finance entities were part of the same unitary business.<sup>88</sup> Since the Commission found the financial entities unitary with the non-financial entities, the taxpayer requested that the financial entities be treated as a financial

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<sup>84</sup> Idaho Code § 63-3045B(7).

<sup>85</sup> See Docket 25948 published in August 2014, page 4; <https://tax.idaho.gov/search-decisions.cfm>.

<sup>86</sup> Notice-1, Page 3, Explanation of Items; <https://tax.idaho.gov/search-decisions.cfm>.

<sup>87</sup> Docket 19722, page 2, ISSUES.

<sup>88</sup> *Id.* at page 7.

institution and the calculation of Idaho tax liability for all members of the unitary group with an Idaho filing requirement be made pursuant to the Financial Formula.<sup>89</sup>

The finance entities provided wholesale financial services to the taxpayer's United States and Canada dealers. There is no indication in the decision that any of the corporations making up the financial entities were presumed a "financial institution" under former Rule 582.03 or that any of the financial entities had taxable Idaho business activity.<sup>90</sup> Instead, the argument centered around a former Rule 582.04 requirement that "the Tax Commission is authorized to exclude any person from the application of Subsection 582.01 upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in Subsections 582.03.a. through 582.03.f. and 582.03.h."

Substantial competition was defined in subsection 582.02. The Commission stated that "[i]t is not apparent from the facts presented by the Petitioner that more than 50 percent of its unitary income producing activity is in substantial competition with the banks and other lending institutions. While a part of the unitary business offers financing to retail customers, it does not appear that the credit business results in more than 50 percent of the Petitioner's unitary income."<sup>91</sup> Later in the decision, the Commission states, "the Petitioner and the affiliated corporations of [Redacted] and its subsidiaries are not a financial institution."<sup>92</sup>

In comparing the facts in Docket 19722 against the facts in the current docket before the Commission, there are material differences. For example, in the current docket, the Bank is a

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<sup>89</sup> *Id.* at page 8, number 2.

<sup>90</sup> Docket 19722 does not identify the taxable years at issue; however, based upon the 2011 issue date, the Commission's decision applied the language contained within Rule 582 prior to its amendment in 2012.

<sup>91</sup> Docket 19722, page 9; <https://tax.idaho.gov/search-decisions.cfm>

<sup>92</sup> *Id.* at page 14, Section E.

financial institution under Rule 582.02 for taxable years beginning on or after December 31, 2011 and presumed to be a financial institution for the pre-2012 taxable years.

Additionally, the Bank has taxable business activity in Idaho during those years. In Docket 19722, none of the corporations within the financial entities was presumed to be a financial institution or apparently had taxable business activity within and without Idaho.

Furthermore, the taxpayer in Docket 19722 was requesting alternative apportionment by seeking to have its financial entities treated like a financial institution thus allowing the use of the Financial Formula to determine the non-financial members of the unitary group of corporations Idaho tax liability. Given the material differences in the facts between the Docket 19722 and the current case, Docket 19722 does not set precedent for the case currently before the Commission.

After careful review and consideration of the arguments provided by Petitioner, the Bureau, the applicable federal and state law, and the Commission's prior decisions involving the Financial Formula, the Commission finds that the Bank is required to apply the Financial Formula and include credit card receivables in the property factor in the manner prescribed by the Financial Formula and that both the Bank and Affiliate-W use the same property factor denominator which includes the Bank's credit card receivables.<sup>93</sup>

**D. The Bank Was Required to Report the Interest Income and Fee Income from Idaho Customers as an Idaho Receipt for Purposes of the Idaho Sales Factor Calculation.**

For purposes of Idaho standard apportionment formula, the Idaho statute generally assigns business income receipts from the sale of tangible personal property to the Idaho sales factor numerator if the customer is in Idaho.<sup>94</sup> Receipts relating to business income from other than the sale of tangible property are assigned based upon an analysis of where the income-producing

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<sup>93</sup> Financial Formula Section 4.(h).

<sup>94</sup> Idaho Code § 63-3027(q).

activity is performed, not where the customer is located.<sup>95</sup> Accordingly, under standard apportionment, the Bank's interest income and other fees from Idaho customers would be included in its Idaho sales factor numerator based upon an analysis of where the income-producing activity took place.

However, since the Commission found that the Bank was subject to the Financial Formula, the Financial Formula's assignment of these receipts' controls, not the standard apportionment method. Under the Financial Formula, receipts from business income relating to interest income and fees on credit card receivables are Idaho sales if the billing address of the credit card holder is in Idaho.<sup>96</sup> The Bureau obtained the amount of Idaho consumer interest income and fees from Petitioner's records.<sup>97</sup> Not having any information to the contrary, the Commission accepts the amounts reflected in the Bureau's Notice as the Bank's Idaho receipts for interest income and fees.

**E. A Coding Error Occurred Relating to Capitalized Rent Included in the Idaho Property Factor Numerator of Affiliate-W for Taxable Year December 29, 2012.**

During the review of the second audit periods, Petitioner notified the Bureau that it had miscategorized a type of expense due to an error in how the expense was coded. The Bureau, upon its issuance of Notice-2, adjusted the amount of Idaho rent expense included in the Idaho property factor for taxable years ending December 28, 2013, December 27, 2014, and January 2, 2016. The Commission finds that a correction is also necessary to Notice-1. The Commission corrects Notice-1 by adjusting the capitalized rent included in Affiliate-W's Idaho property factor numerator for taxable year ending December 29, 2012, to account for the miscoding.<sup>98</sup>

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<sup>95</sup> Idaho Code § 63-3027(r).

<sup>96</sup> Section 3.(g) of the Financial Formula.

<sup>97</sup> Notice-2, page 4, Explanation of items.

<sup>98</sup> See **Table 4** at the end of this decision.

**VI. ORDER**

Notice-1 dated March 31, 2015, and Notice-2 dated October 10, 2017, both directed to Petitioner, are hereby AFFIRMED as MODIFIED by this decision.

IT IS ORDERED that Petitioner pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
01/01/2011	(\$7,137)	(\$2,218)	(\$9,355)
12/31/2011	(19,529)	(5,293)	(24,822)
12/29/2012	36,015	8,433	44,448
12/28/2013	34,164	6,876	41,040
12/27/2014	30,319	4,889	35,208
01/02/2016	42,492	5,148	47,640
	Payment with amended return		<u>(11,438)</u>
		TOTAL DUE	<u>\$122,721</u>

The Commission calculated the interest shown above through June 15, 2019.

The Commission now DEMANDS immediate payment of this amount.

An explanation of Petitioner’s right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2019,  
a copy of the within and foregoing DECISION was served by sending the same by United States  
mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]