

## BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of ) DOCKET NOS. 1-253-958-656 &  
[REDACTED] ) 1-335-923-712  
Petitioner. )  
 ) DECISION

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[REDACTED] (Petitioner) protested the Notice of Deficiency Determination (Notice) dated August 3, 2021,<sup>1</sup> and the Notice dated September 13, 2024,<sup>2</sup> issued by the Income Tax Audit Bureau (Bureau). Petitioner disagreed with the Bureau's adjustments to nonbusiness income for tax years [REDACTED] through [REDACTED] and tax year [REDACTED]. The Idaho State Tax Commission (Tax Commission) reviewed the matter and for the reasons stated below modifies both Notices.

### BACKGROUND

Petitioner is a subsidiary of [REDACTED] and a manufacturer and seller of [REDACTED] [REDACTED].<sup>3</sup> [REDACTED] the parent, included Petitioner in its consolidated return for federal purposes. For Idaho purposes, Petitioner is the entity who filed an Idaho return to include the parent and other affiliates in calculation of their apportionable income and apportionment factor. In [REDACTED] entered a "business combination"<sup>5</sup> with [REDACTED]

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<sup>1</sup> For tax years [REDACTED] through [REDACTED]

<sup>2</sup> For tax year [REDACTED]

<sup>3</sup> [REDACTED] include [REDACTED] products.  
<sup>4</sup> [REDACTED] is a successor of [REDACTED] in the [REDACTED] and [REDACTED] started filing its own Idaho return in [REDACTED] acquired [REDACTED] the parent, sold [REDACTED] changed its name to [REDACTED] received ordinary and preferred stock of [REDACTED] representing a [REDACTED] economic interest, and a [REDACTED] voting interest in [REDACTED]. Since its initial filing to Idaho, [REDACTED] had never been combined with the parent or Petitioner. For fiscal year ended [REDACTED], [REDACTED] started filing its own Idaho return to include [REDACTED]

<sup>5</sup> Generally, business combination occurs when one entity gains control over another entity or a business, i.e., acquisition, merger, or consolidation. On [REDACTED], [REDACTED] was acquired by [REDACTED] which merged with [REDACTED] on [REDACTED].

████████ (████ As a result, the parent received a █████ ownership interest in █████ in exchange for all the parent's interest in █████ and recognized a gain from the business combination (████ gain) as a long-term capital gain for federal purposes. The parent purchased additional common stock of █████ which increased its total owned share to █████ and for this minority ownership interest in █████ the parent received dividends from █████ (████ dividends) at the end of tax year █████ For tax years █████ and █████ the parent received foreign deemed income/dividends<sup>6</sup> and reported a foreign currency exchange gain.

Petitioner treated the █████ gain, the foreign currency exchange gain and foreign deemed income/dividends as nonbusiness income, but the Bureau determined that they are apportionable business income. The Bureau adjusted Petitioner's returns and issued a Notice for tax years █████ through █████ (████ Notice), and another Notice for tax year █████ (████ Notice).

Petitioner protested the Notices, disagreeing with the Bureau's adjustments to nonbusiness income for the years under review. Specifically for tax year █████ Petitioner argued that the Bureau's adjustment is beyond the statute of limitations.<sup>7</sup> Petitioner further stated that if the Bureau's adjustments were within the statute of limitations, the █████ gain and the inclusion of █████ dividends are nonbusiness income as they did not meet either the transactional test or the

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<sup>6</sup> The foreign deemed incomes/dividends, in this case, are the Internal Revenue Code (IRC) section 965 income, subpart F income, IRC section 986(c) gain (foreign currency gain), foreign dividends from a specified 10% owned foreign corporation (SFC), and Global Intangible Low-Taxed Income (GILTI).

<sup>7</sup> When the Bureau initially issued the Notice of Deficiency Determination (1<sup>st</sup> Notice), they accepted Petitioner's nonbusiness income treatment for the █████ gain but disallowed the nonbusiness income treatment for the foreign deemed income/dividends. After the 1<sup>st</sup> Notice was issued, Petitioner filed an amended return to report federal adjustments for tax year █████ The Bureau issued the 2<sup>nd</sup> Notice to incorporate the █████ federal adjustments. The █████ federal adjustments were unrelated to the █████ gain or the █████ dividends; however, the Bureau disallowed Petitioner's nonbusiness income treatment for the █████ and issued the 3<sup>rd</sup> Notice. After the 3<sup>rd</sup> Notice was issued, Petitioner filed another amended return to report additional federal adjustments for tax year █████ The Bureau incorporated the additional federal adjustments and issued the 4<sup>th</sup> Notice.

functional test for tax year [REDACTED] For tax years [REDACTED] [REDACTED] and [REDACTED] Petitioner argued that the foreign deemed income/dividends and certain gains, i.e., the Internal Revenue Code (IRC) section 965 income, subpart F income, IRC section 986(c) gain (foreign currency gain), foreign dividends from a specified 10% owned foreign corporation (SFC), and Global Intangible Low-Taxed Income (GILTI), also did not meet either the transactional test or the functional test, and are therefore properly reported as nonbusiness income. The Bureau acknowledged Petitioner's protest and sent the matters to the Tax Commission's Appeals Unit (Appeals) for administrative review.

Appeals reviewed the cases and sent Petitioner a letter explaining the options available for redetermining a Notice. Petitioner responded and requested an informal hearing for the cases, which was held on [REDACTED]. At the conclusion of the hearing, Appeals requested Petitioner provide additional information to enable a review and analysis of the nonbusiness income issue. Petitioner provided the requested information in a timely manner. The Tax Commission, having reviewed the file, hereby issues its final decision.

## ISSUES

The issues on appeal are whether the Bureau adjusted Petitioner's nonbusiness income within the statute of limitations, and if so, whether the [REDACTED] gain and the [REDACTED] dividends are nonbusiness income or apportionable business income for tax year [REDACTED] For tax years [REDACTED] [REDACTED] and [REDACTED] the issues are about the IRC section 965 income, subpart F income, foreign currency gain, foreign dividends from a SFC, and GILTI, and whether these foreign deemed income/dividends and gain are nonbusiness income or apportionable business income. For tax year [REDACTED] only, the other issues on appeal are whether Petitioner owes additional \$20 minimum tax and \$10 permanent building fund (PBF) tax.

## LAW AND ANALYSIS

### **Statute of limitations for tax year [REDACTED]**

Idaho Code section 63-3072(i) states,

The expiration of the period of limitations as provided in this section shall be suspended for the time period between the issuance by the state tax commission of a notice under either section 63-3045 or 63-3065, Idaho Code, and the final resolution of any proceeding resulting from the notice.

For tax year [REDACTED] Petitioner, at the Bureau's request, signed three waivers extending the statute of limitations. The first waiver extended the statute through [REDACTED], the second waiver through [REDACTED], and the third waiver through [REDACTED]. The Bureau issued the first Notice on [REDACTED], before expiration of the statute of limitations and issued three other Notices for tax years [REDACTED] through [REDACTED] on [REDACTED], [REDACTED], and [REDACTED] [REDACTED] respectively.

Upon issuance of the first Notice, the expiration of the statute of limitations was suspended under Idaho Code section 63-3072(i),<sup>8</sup> therefore, the Tax Commission found that the Bureau made all adjustments in a timely manner.

The Tax Commission now reviews whether the [REDACTED] gain and [REDACTED] dividends are nonbusiness income or apportionable business income.

### **[REDACTED] gain and [REDACTED] dividends for tax year [REDACTED]**

#### Business income

Idaho Code section 63-3027(a)(1) states,

"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from the acquisition, management, or disposition of tangible and intangible property when

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<sup>8</sup> Idaho Code section 63-3072(i) "The expiration of the period of limitations as provided in this section shall be suspended for the time period between the issuance by the state tax commission of a notice under either section 63-3045 or 63-3065, Idaho Code, and the final resolution of any proceeding resulting from the notice."

such acquisition, management, or disposition constitutes integral or necessary parts of the taxpayer's trade or business operations. Gains or losses and dividend and interest income from stock and securities of any foreign or domestic corporation shall be presumed to be income from intangible property, the acquisition, management, or disposition of which constitutes an integral part of the taxpayer's trade or business; such presumption may only be overcome by clear and convincing evidence to the contrary.

Idaho Code section 63-3027(a)(l) provides two separate definitions for "business income".

The first definition is the transactional test, and the second definition is the functional test. The Tax Commission must review whether the [REDACTED] gain and the [REDACTED] dividends qualify as "business income" as defined in Idaho Code section 63-3027(a)(1) under either (1) the transactional test or (2) the functional test.

### ***Transactional test***

The transactional test provides that business income is "income arising from transactions and activity in the regular course of the taxpayer's trade or business."<sup>9</sup> However, Idaho Income Tax Administrative Rule IDAPA 35.01.01.332.03., states in part that the transaction or activity "need not be one that frequently occurs in the trade or business." It is reasonable to conclude that transactions are made "in the regular course of a trade or business" where they "are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does."<sup>10</sup> In addition, "Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Idaho."<sup>11</sup> In the *Noell* case,<sup>12</sup> the district court examined two cases, one in Illinois and the other in Indiana, in reaching its decision wherein the respective appellate courts concluded that the gain arising from a holding company's sale of a

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<sup>9</sup> Idaho Code section 63-3027(a)(1).

<sup>10</sup> IDAPA 35.01.01.332.03.

<sup>11</sup> IDAPA 35.01.01.332.02.

<sup>12</sup> *Noell Industries, Inc. v. Idaho State Tax Commission*, 167 Idaho 367, 470 P3d 1176 (2020).

subsidiary can qualify as business income if the holding company regularly engages in the buying and selling of subsidiaries; however, a one-time sale does not qualify. *Compare E.1 DuPont De Nemours & Co. v. Indiana Dep 't of State Revenue*, 79 N.E.3d 1016, 1023 (Ind. T.C. 2017), with *PPG Indus., Inc. v. Dep 't of Revenue*, 765 N.E.2d 34, 45 (Ill. App. 2002). Importantly, the Illinois and Indiana statutes at issue in these cases utilize similar language to the Uniform Division of Income for Tax Purposes Act<sup>13</sup> and the Idaho statute to define business income, including the term "regular" to describe the trade and business operations that qualify as "business income" under the transactional test.<sup>14</sup>

In the present case, the parent recognized the [REDACTED] gain from the business combination in [REDACTED] [REDACTED] used to be two separate companies: [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] The parent acquired [REDACTED] [REDACTED] [REDACTED] in [REDACTED] [REDACTED] and since then, [REDACTED] [REDACTED] had been a wholly owned subsidiary of the parent until [REDACTED] when the parent sold it to [REDACTED] [REDACTED] Subsequently, [REDACTED] [REDACTED] [REDACTED] merged into [REDACTED] [REDACTED] and [REDACTED] [REDACTED] changed its name to [REDACTED] [REDACTED] As a result, the parent received shares of [REDACTED] in exchange for all its stock in [REDACTED] [REDACTED] [REDACTED] and became a minority shareholder in [REDACTED] From [REDACTED] to [REDACTED] the percentage of the parent's ownership interest in [REDACTED] varied but was always less than [REDACTED] of the voting interest. Upon the [REDACTED] business combination between [REDACTED] and [REDACTED] the parent received [REDACTED] shares of [REDACTED] in exchange for all its interest in [REDACTED] The parent recognized a long-term capital gain because

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<sup>13</sup> The Uniform Division of Income for Tax Purposes Act (UDITPA) provides a uniform method for dividing income between states for tax purposes, thereby assuring that a taxpayer is not taxed more than once on its net income.

<sup>14</sup> Idaho Code section 63-3027(a)(1); *E.1 DuPont De Nemours & Co.*, 79 N.E.3d at 1022 (quoting Indiana Code section 6-3-1-20 (2001)); *PPG Indus., Inc.*, 765 N.E.2d at 42 (quoting 35 ILL. COMP. STAT. 5/1501(a)(1) (1994)).

<sup>15</sup> The percentage of the [REDACTED] shares owned by the parent varied from [REDACTED] to [REDACTED] but the parent maintained less than a [REDACTED] voting interest in [REDACTED]

of the difference in tax basis between its [REDACTED] shares and the [REDACTED] shares. The parent also received dividends from [REDACTED] ([REDACTED] dividends) at the end of [REDACTED]

To support their argument that the gain from the sale of [REDACTED] stock is not a part of the regular business, Petitioner explained in their protest that,

Historically, the [REDACTED] was a [REDACTED] with diverse operation businesses, including those in the beer [REDACTED] [REDACTED] food [REDACTED] industries. However, beginning in [REDACTED] began disposing of its [REDACTED] businesses, and began starting with its disposition of [REDACTED] in [REDACTED] acquiring additional [REDACTED] businesses.

The Tax Commission's research shows, in [REDACTED] the parent acquired [REDACTED] a [REDACTED]. In [REDACTED] the parent completed a spin-off of [REDACTED].<sup>16</sup> In [REDACTED] the parent finalized its purchase of [REDACTED],<sup>17</sup> a [REDACTED]. The parent acquired some [REDACTED] businesses, but a spin-off of [REDACTED] was the only divestiture the parent completed prior to [REDACTED]. After reviewing this information, it is clear that [REDACTED] is no longer the parent's or Petitioner's primary business after the sale of [REDACTED] in [REDACTED]. It is also clear that buying and selling shares of stock and purchasing companies is not the regular course of the parent's or Petitioner's businesses. Therefore, the Tax Commission found that the [REDACTED] gain and the [REDACTED] dividends did not meet the transactional test. The Tax Commission now reviews whether the gain and dividends meet the functional test.

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<sup>16</sup> [REDACTED] including [REDACTED] has been filing its own Idaho return since the [REDACTED] and never been combined with the parent and/or Petitioner.

<sup>17</sup> [REDACTED] is a holding company, whose subsidiaries includes [REDACTED] (a holding company of [REDACTED] [REDACTED] has been filing its own Idaho return since [REDACTED] (business income tax account commenced in [REDACTED] but no return was filed until [REDACTED] and never been combined with the parent and/or Petitioner.

### ***Functional test***

The functional test provides that business income is “income for the acquisition, management, or disposition of tangible property when such acquisition, management or disposition constitutes integral or necessary parts of the taxpayer's trade or business operations.”

To meet the functional test, the Idaho Supreme Court explained in the *Noell* case,<sup>18</sup>

Rule 333.08 of Idaho's Income Tax Administrative Rules provides two methods for meeting the functional test: "business income" can be established either by (a) finding that the intangible interest serves an operational function-rather than a passive investment-as "an integral, functional, or operative component to the taxpayer's trade or business operations," or (b) by meeting the unitary-business test. IDAPA 35.01.01.333.08. Even though these methods would appear to be independent of each other, the U.S. Supreme Court has rejected the notion that the operational-function test and unitary-business test are separate principles. *MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dep't of Rev.*, 553 U.S. 16, 29-32 (2008). Therefore, **we must apply both tests.** (emphasis added)

The Tax Commission will now apply both tests to the [REDACTED] gain and the [REDACTED] dividends.

### ***Operational or passive investment test***

IDAPA 35.01.01.333.05., provides,

Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general.

Petitioner explained in the protest that,

On [REDACTED], in conjunction with the merger transaction, [REDACTED] and [REDACTED] entered into a [REDACTED], outlining the [REDACTED] between [REDACTED]

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<sup>18</sup> *Noell Industries, Inc. v. Idaho State Tax Commission*, 167 Idaho 367, 470 P.3d 1176 (2020).

[REDACTED] and [REDACTED] and a [REDACTED], outlining certain services (e.g., [REDACTED], etc.) to be provided by [REDACTED] to [REDACTED] for a limited period of time after the merger. The [REDACTED]

[REDACTED] The [REDACTED] also addresses the [REDACTED] between the parties including the receipt of [REDACTED] and certain other matters. Under the [REDACTED], [REDACTED] had the ability to nominate [REDACTED] of [REDACTED] provided that the economic interest of [REDACTED] [REDACTED] (with such nomination to be reduced to [REDACTED], directors if [REDACTED] interest in [REDACTED] dropped below [REDACTED]).

Petitioner mentioned in their protest that the parent's ownership interest in [REDACTED] varied from [REDACTED] to [REDACTED] but the parent constantly maintained less than a [REDACTED] voting interest<sup>19</sup> in [REDACTED] and they always acted as a passive investor. The Tax Commission reviewed the agreements<sup>20</sup> mentioned in the protest and agrees with Petitioner's statement regarding their independence from [REDACTED]. While the parent and Petitioner did nominate [REDACTED] directors<sup>21</sup> to the [REDACTED] board, these [REDACTED] directors were not employed by [REDACTED] nor did they have control over [REDACTED]. With the [REDACTED] business combination, some of these agreements were renewed or restated, but the agreement terms remained either the same or very similar.<sup>22</sup> Based on this information, the Tax Commission found that the parent's

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<sup>19</sup> Voting interest is the ability to influence or control the governance and decision making processes of a company.

<sup>20</sup> The [REDACTED] and [REDACTED] regarding the sale of [REDACTED] in [REDACTED]

<sup>21</sup> Generally, [REDACTED] directors provide independent oversight, strategic guidance, and risk management expertise; however, they do not have any controlling power.

<sup>22</sup> The parent and Petitioner acknowledged the independence of [REDACTED] and they were not involved in [REDACTED] day-to-day business operations. The parent and Petitioner were entitled to nominate [REDACTED] out of [REDACTED] directors of the [REDACTED] board, but those [REDACTED] directors were not employed by [REDACTED] nor did they have control over [REDACTED].

ownership interest in [REDACTED] and [REDACTED] is not for operational purposes, but for investment purposes.

*Unitary business test*

Idaho Code section 63-3027(t) states in part,

...the income of two (2) or more corporations, wherever incorporated, the voting stock of which is more than fifty percent (50%) owned directly or indirectly by a common owner or owners, when necessary to accurately reflect income, shall be... apportioned **as if the group of corporations were a single corporation**, in which event:

(1) The Idaho taxable income of any corporation subject to taxation in this state shall be determined by use of a combined report which includes the income, determined under paragraph (2) of this subsection, of all corporations which are members of a unitary business, ... apportioned using apportionment factors for all corporations included in the combined report and methods set out in this section. The use of a combined report does not disregard the separate corporate identities of the members of the unitary group. Each corporation which is transacting business in this state is responsible for its apportioned share of the combined business income..., minus its net operating loss carryover or carryback. (emphasis added)

IDAPA 35.01.01.340 through 344, outlines the principles for determining the existence of a unitary group. IDAPA 35.01.01.340 explains the concept of a unitary business as a “single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities...” and IDAPA 35.01.01.341.02., further explains,

A unitary business is characterized by significant flows of value evidenced by factors such as those described in *Mobil Oil Corp. v. Vermont*, 445 U.S. 425 (1980): **functional integration, centralization of management, and economies of scale**. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one (1) or more of the factors mentioned above. (emphasis added)

IDAPA 35.01.01.342 provides descriptions of functional integration, centralization of management, and economies of scales. IDAPA 35.01.01.343 describes the same type of business<sup>23</sup> as being one of the indicators of unity, and IDAPA 35.01.01.344 states that, to be unitary, corporations must be part of a controlled group which is defined by common ownership.

To support their argument that a unitary relationship does not exist, Petitioner stated in their protest that [REDACTED],<sup>24</sup> [REDACTED] and [REDACTED] were not commonly managed, shared no common services or operations, shared no common facilities, did not have common purchasing or other functions, i.e., human resources, sales, distributions, manufacturing, marketing, and did not engage in any intercompany transactions. Petitioner further argued that the parent had the right to nominate [REDACTED] directors to the [REDACTED] member [REDACTED] board of directors prior to [REDACTED] and after the [REDACTED] business combination, the parent had the right to nominate [REDACTED] members to the [REDACTED] member [REDACTED] board of directors. As mentioned earlier, these directors were not employed by [REDACTED] or [REDACTED] nor did they have controlling power over [REDACTED] or [REDACTED]. To further support their nonunitary relationship, Petitioner stated the parent was not required to invest in [REDACTED] or [REDACTED] to fund its working capital for business operations.

The Tax Commission reviewed the agreements<sup>25</sup> the parent and its affiliates entered upon completion of the [REDACTED] sale of [REDACTED] [REDACTED] and the [REDACTED] business combination with [REDACTED]. The Tax Commission found that Petitioner's statements in the protest are consistent with the

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<sup>23</sup> The Bureau indicated that the parent and Petitioner were the owner of [REDACTED] and therefore they were in the same line of business (manufacturing and distribution of [REDACTED]) as [REDACTED]. However, [REDACTED] filed its own Idaho returns as it was not a unitary member of Petitioner for all years until it's sold to a third-party investor in [REDACTED].

<sup>24</sup> [REDACTED] includes the parent, Petitioner and all their affiliates.

<sup>25</sup> [REDACTED]. These agreements were between [REDACTED] and [REDACTED] regarding the sale of [REDACTED] in [REDACTED]. As for the [REDACTED] business combination, the parent and [REDACTED] entered the following agreements:

agreements, and there was no significant flow of values by factors such as functional integration, centralization of management, and economies of scale. Therefore, the Tax Commission determined that the parent and Petitioner did not have a unitary relationship with [REDACTED] and [REDACTED]

After applying the two requirements under the functional test, the Tax Commission determines the parent's ownership of the [REDACTED] and [REDACTED] shares was not an integral part of the parent's or Petitioner's business, and the sale of the [REDACTED] shares was not in the regular course of the parent's or Petitioner's business. The parent and Petitioner were not in the same line of business as [REDACTED] or [REDACTED] nor did they have control over [REDACTED] or [REDACTED] As for the [REDACTED] dividends, the Tax Commission determined they were due to the parent's minority ownership interest in [REDACTED] for investment purposes.

The Tax Commission modifies the [REDACTED] Notice to accept Petitioner's nonbusiness income treatment on the [REDACTED] gain and the [REDACTED] dividends.

The Tax Commission now reviews the IRC section 965 income, subpart F income, foreign currency gain, foreign dividends from a SFC, and GILTI, and whether these foreign deemed income/dividends and gain are nonbusiness income or apportionable business income for tax years [REDACTED] and [REDACTED]

**IRC section 965 income,<sup>26</sup> subpart F income,<sup>27</sup> foreign dividends from a specified 10% owned foreign corporation,<sup>28</sup> and global intangible low taxed income (GILTI)<sup>29</sup>**

To help determine whether it's business or nonbusiness income, upon the Tax Commission's request, Petitioner provided details of their IRC section 965 income, subpart F income, foreign dividends from SFCs, and GILTI, i.e., foreign deemed income/dividends. The Tax Commission reviewed this information and found that the parent received these foreign deemed income/dividends from [REDACTED] because of its ownership interest in [REDACTED]. As previously determined, the parent's ownership interest in [REDACTED] was for investment purposes and the parent and Petitioner did not have a unitary relationship with [REDACTED]. Therefore, the Tax Commission finds that these foreign deemed income/dividends are also nonbusiness income and therefore modifies the Notice to accept Petitioner's nonbusiness income treatment for them.

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<sup>26</sup> IRC section 965 income for tax year [REDACTED]. In 2017, the Tax Cuts and Jobs Act (TCJA) amended IRC section 965 to facilitate the repatriation of foreign earning accumulated by U.S. shareholder in specified corporations (SFCs), which required U.S. shareholders to include in their gross income, the accumulated post-1986 deferred foreign income of their deferred foreign income corporations for the last taxable income beginning before January 1, 2018. This inclusion is treated as subpart F income, which is subject to U.S. income taxation. IDAPA 35.01.01.017., states in part, "...Idaho taxpayers must include the Section 965, Internal Revenue Code, increase in their subpart F income (Section 965(a) reduced by Section 965(c), Internal Revenue Code), when computing their Idaho taxable income regardless of how such income is reported to the Internal Revenue Service on the federal income tax form."

<sup>27</sup> Subpart F income for tax years [REDACTED] and [REDACTED]. Idaho Code section 63-3027C(e)(1), states, "Amounts included in income by reference to subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code shall constitute dividends from payors outside the fifty (50) states and District of Columbia."

<sup>28</sup> Foreign dividends from a specified 10% owned foreign corporation (SFC) for tax year [REDACTED]. TCJA of 2018 introduced changes to IRC section 245A. Under IRC section 245A, a domestic corporation that owns at least 10% of the stock (by vote and value) of a foreign corporation is entitled to a dividend received deduction for the foreign-source portion of dividends received from that foreign corporation for federal purposes. For Idaho purposes, Idaho Code section 63-3022 and its subsections do not require a taxpayer to add back this federal deduction defined under IRC section 245A and therefore the foreign dividends from SFCs are fully deductible for Idaho purposes regardless of the taxpayer's filing method.

<sup>29</sup> GILTI for tax year [REDACTED]. TCJA of 2018 introduced the concept of GILTI under IRC section 951A. GILTI is a U.S. minimum tax on certain earnings of Controlled Foreign Corporations (CFCs) that exceed a 10% return on the CFC's tangible property, excluding land. Under the TCJA, U.S. shareholders of CFCs are required to include GILTI in their gross income, like subpart F income. Corporate U.S. shareholders must include GILTI in their gross income on a current basis, like subpart F income, but corporate U.S. shareholders can claim a deduction under IRC section 250. Specifically, the deduction is 50% of GILTI inclusion amount for tax years 2018 through 2025, and 37.5% thereafter. IDAPA 35.01.01.645.01.b., states, "As provided in Section 63-3027C(e)(1), Idaho Code, amounts included in income under sections 951 and 951A of the Internal Revenue Code are treated as dividends from payors outside the fifty (50) states and District of Columbia." Idaho Code section 63-3022 and its subsections do not require a taxpayer to add back the IRC section 250 deduction.

## IRC section 986(c) gain<sup>30</sup>

IRC section 986(c) requires U.S. shareholders of Controlled Foreign Corporations (CFCs)<sup>31</sup> to recognize foreign currency gain or loss with respect to distributions of previously taxed earnings and profits. When there is a distribution, U.S. shareholders of CFCs recognize foreign currency gain or loss due to fluctuation in exchange rates between the time of the deemed inclusion and the actual distribution under IRC section 986(c).

In the present case, the parent recognized an IRC section 986(c) gain because of the parent's ownership interest in █. As previously determined, the parent's ownership interest in █ is for investment purposes and the parent and Petitioner did not have a unitary relationship with █. Therefore, the Tax Commission finds that the IRC section 986(c) gain is also nonbusiness income and modifies the Notice to accept Petitioner's nonbusiness income treatment.

## \$20 minimum tax for tax year 2020

Idaho Code section 63-3025 states in part,

- (1) ... a tax is hereby imposed on the Idaho taxable income of a corporation, other than an S corporation, which transacts or is authorized to transact business in this state or which has income attributable to this state.
- (3) The tax imposed by subsection (1) or (2)<sup>32</sup> of this section shall not be less than twenty dollars (\$20.00) ...

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<sup>30</sup> IRC section 986(c) gain for tax year █. IRC section 986(c) Previously taxed earnings and profits, (1) In general. Foreign currency gain or loss with respect to distributions of previously taxed earnings and profits (as described in section 959 or 1293(c)) attributable to movements in exchange rates between the times of deemed and actual distribution shall be recognized and treated as ordinary income or loss from the same source as the associated income inclusion.

<sup>31</sup> A controlled foreign corporation (CFC) is a foreign company directly or indirectly controlled by U.S. shareholders. For U.S. income tax purposes, a foreign corporation is "controlled" if U.S. shareholders own more than 50% of its outstanding voting stock.

<sup>32</sup> Idaho Code section 63-3025(2) provides a tax rate for an S-corporation. Since the parent and Petitioner are not S-corps, this subsection is not relevant to this case.

A minimum tax of \$20 is required for each corporation that transacts business in Idaho, is registered with the Idaho Secretary of State (SOS) to do business in Idaho or is exercising its corporate franchise in Idaho.<sup>33</sup>

The Bureau calculated the \$20 minimum tax for each of the [REDACTED] companies to include not just unitary members but also nonunitary members of Petitioner.<sup>34</sup> The Tax Commission reviewed Petitioner's [REDACTED] Idaho return and verified that Petitioner excluded these nonunitary members from their calculation of apportionable income and apportionment factor. Therefore, the Tax Commission finds these nonunitary members are not subject to the \$20 minimum tax.

The Tax Commission reviewed Petitioner's Idaho return<sup>35</sup> for tax year [REDACTED] and found that [REDACTED] companies were registered with the Idaho SOS and/or transacted business activities in Idaho. [REDACTED] of these companies had business activities in Idaho, which resulted in more than \$20 in Idaho income tax, and therefore they are not required to pay the minimum tax. The Tax Commission found that the other [REDACTED] companies, including the parent,<sup>36</sup> did not have activities resulting in more than \$20 tax. Therefore, they are subject to the \$20 minimum tax.<sup>37</sup> The Tax Commission modifies the Notice asserting the \$20 minimum tax for only [REDACTED] unitary companies.

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<sup>33</sup> The \$20 minimum tax isn't required to be paid by a nonproductive mining corporation, corporation not organized for profit that isn't required to pay federal tax on unrelated business income, homeowners' association filing Form 1120-H and having no federal taxable income, and corporation under the protection of Public Law 86-272.

<sup>34</sup> Idaho Form 41A lists total [REDACTED], and [REDACTED] companies out of total [REDACTED] companies resulted in more than \$20 of Idaho income tax. The Bureau calculated a \$20 minimum tax for [REDACTED] companies ([REDACTED]), and the [REDACTED] include [REDACTED] nonunitary companies.

<sup>35</sup> Idaho Form 41A, column F "Check if transacting business in Idaho" – Petitioner checked the box for [REDACTED] companies as they are transacting business in Idaho. Petitioner did not check the box for the parent. Total number of the companies who must pay Idaho tax at least \$20 is [REDACTED] out of the [REDACTED] companies calculated more than \$20 Idaho income tax, and other [REDACTED] companies, including the parent, are subject to the \$20 minimum tax.

<sup>36</sup> The parent was registered to the Idaho SOS.

<sup>37</sup> The Idaho income tax for [REDACTED] companies out of the [REDACTED] companies resulted in more than \$20 due to their business activities in Idaho.

## **\$10 Permanent Building Fund (PBF) tax for tax year 2020**

IDAPA 35.01.01.855, provides under its subsections,

**01. Corporations Included in a Group Return.** The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income attributable to Idaho and included in a group return...

The Bureau calculated the \$10 PBF tax for each of [REDACTED] companies listed on their Form 41A, including not just unitary members but also nonunitary members. The Tax Commission reviewed Petitioner's Form 41A and found that they had only [REDACTED] companies, including the parent, who were subject to the \$10 PBF tax. As previously mentioned, Petitioner excluded these nonunitary members from their calculation of apportionable income and apportionment factor. The Tax Commission finds these nonunitary members are not subject to the \$10 PBF tax and therefore modifies the Notice, asserting the \$10 PBF tax for only [REDACTED] unitary companies.

### **CONCLUSION**

The Tax Commission finds that the [REDACTED] gain and the [REDACTED] dividends for tax year [REDACTED] are nonbusiness income as they did not meet the transactional test or the functional test. The Tax Commission also finds that the foreign deemed income/dividends and the foreign currency exchange gain for tax years [REDACTED] and [REDACTED] are nonbusiness income as they were generated because of the parent's minority investment in [REDACTED]. Therefore, the Tax Commission modifies the Notices to accept Petitioner's nonbusiness income treatment on these gains<sup>38</sup> and foreign deemed income/dividends.<sup>39</sup> As for a \$20 minimum tax and a \$10 PBF tax, the Tax Commission modifies

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<sup>38</sup> [REDACTED] gain and foreign currency exchange gain.

<sup>39</sup> [REDACTED] dividends, IRC section 965 income, subpart F income, foreign dividends from SFCs, and GILTI.

the [REDACTED] Notice to include only Petitioner's unitary members who were registered with the Idaho SOS and/or transacted business activities in Idaho.

The Bureau added interest and penalties to Petitioner's Idaho tax. The Tax Commission reviewed the addition and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Tax Commission MODIFIES the [REDACTED] Notice dated April 18, 2024, and the [REDACTED] Notice dated September 13, 2024, directed to Petitioner. IT IS ORDERED that Petitioner pay the following tax, penalty, and interest.



DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2025.

IDAHO STATE TAX COMMISSION

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2025,  
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:

Receipt No.

[REDACTED]

\_\_\_\_\_

\_\_\_\_\_

[REDACTED]