

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

██████████

Petitioner.

DOCKET NO. 1-628-443-648

DECISION

██████████ and its subsidiaries (Petitioner) protested the Notice of Deficiency Determination (Notice) dated October 4, 2023, issued by the Income Tax Audit Bureau (Bureau). Petitioner disagreed with the Bureau's adjustments, to include ██████████ and its affiliates in the calculation of Petitioner's apportionable income and apportionment factor. The Idaho State Tax Commission (Tax Commission) reviewed the matter and for the reasons stated below cancels the Notice.

BACKGROUND

Petitioner is a supplier of packaging materials for food products and healthcare industries and owned by ██████████. Petitioner was a consolidated subsidiary of ██████████ for federal purposes. For Idaho purposes, Petitioner filed its own Idaho returns, which included the subsidiaries directly owned by ██████████¹, but did not include any other subsidiaries of ██████████. The Bureau determined that all of the ██████████

¹ ██████████ is a family-owned investment management portfolio. Through ██████████, ██████████ invests in several operating companies. The protest explains, "[t]hese portfolio companies operated in diverse industries, including ██████████. When acquiring companies for its portfolio, ██████████ looks for leading companies with specialized know-how within a niche market that are projected to have favorable returns on investment."

² ██████████ includes ██████████ (EIN ██████████) for all years, and ██████████ (EIN ██████████) and ██████████ (EIN ██████████) for tax year 2019, based on Idaho Form 41A.

██████████ (██████████ for ██████████ ██████████ ██████████ ██████████ ██████████ ██████████³, and all other subsidiaries of ██████████ had a unitary relationship with Petitioner. The Bureau included these entities in Petitioner's apportionable income and apportionment factor and issued a Notice. ██████████ representing Petitioner as they provide management services, protested the Notice and disagreed with the inclusion of all ██████████ subsidiaries in Petitioner's combined reporting. The Bureau acknowledged the protest and sent the matter to the Tax Commission's Appeals Unit (Appeals) for administrative review.

Appeals reviewed the case and sent Petitioner and ██████████ a letter explaining the options available for redetermining a Notice. ██████████ responded and requested an informal hearing, which was held on April 7, 2025. After the hearing, Appeals requested additional information, which ██████████ provided. Having reviewed the file, the Tax Commission hereby issues its final decision.

ISSUE

The issue on appeal is whether Petitioner had a unitary relationship with ██████████ and its subsidiaries.

LAW AND ANALYSIS

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

³ These companies filed each separate Idaho return on their own.

⁴ ██████████ and its subsidiaries, except for Petitioner, ██████████ and ██████████ did not file to Idaho.

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)

Idaho Income Tax Administrative Rules IDAPA 35.01.01.(Idaho Rule(s)) 340 through 344, outline the principles for determining the existence of a unitary group. Idaho Rule 340 explains the concept of a unitary business as “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 Idaho Rule 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)

Idaho Rule 342 provides descriptions of functional integration, centralization of management, and economies of scales. Idaho Rule 343 describes the same type of business as being one of the indicators of unity, and Idaho Rule 344 says that, to be unitary, corporations must be part of a controlled group which is defined by common ownership.

In the protest, Petitioner explained,

The [REDACTED] [REDACTED] began operations more than a century ago and was acquired by [REDACTED] in 2012. After its acquisition by [REDACTED] the [REDACTED] [REDACTED] continued to operate independently, maintaining its own management/executive team (CEO, CFO, Vice Presidents of Marketing, Operations, etc.) and headquarters in [REDACTED] [...] The [REDACTED] [REDACTED] has also maintained its own functional departments, including accounting, sales and marketing, research and development, human resources, IT, purchasing, and supply chain and quality control. There is no sharing of office space, warehouses, or manufacturing facilities between the [REDACTED] [REDACTED]

and the other portfolio companies or [REDACTED]. Rather, the [REDACTED] [REDACTED] operates as a fully autonomous and discrete business, with limited involvement from [REDACTED] and no vertical or horizontal integration with [REDACTED] or any portfolio companies.

Petitioner's responses to the Bureau's unitary questionnaires indicated that all affiliated members of [REDACTED] obtained tax return preparation and accounting services from a common source⁵, and participated in common insurance programs⁶. Petitioner and [REDACTED] had common directors of the board as well as a common officer. However, there were no common directors/officers between/among other subsidiaries of [REDACTED]. Each company had its own finance team, preparing budgets on a quarterly basis, and each company's management team reviewed and approved the budgets. [REDACTED] the parent, receives monthly financial results and quarterly budget reports in order to perform investment oversight. Petitioner clarified in their responses to the unitary questionnaire that "[m]onthly financial results and quarterly budget reports are submitted as management reporting. Management reporting only includes data that is necessary to allow for the parent corporation [REDACTED] to perform investment oversight."

The Notice explained that the [REDACTED] [REDACTED] [REDACTED] and [REDACTED] were wholly owned by [REDACTED] which means that they were members of a commonly controlled group, and there was significant flow of value between/among all these companies, including [REDACTED]. One of the Bureau's findings was that the "transfer pricing agreement shows the exchange of millions of dollars in value from [REDACTED] [REDACTED] [REDACTED] to [REDACTED]. The Tax Commission reviewed the transfer pricing agreement and found that this "agreement" is a transfer pricing and economic analysis

⁵ Ernst and Young LLP

⁶ General liability (including products), automotive liability, worker's compensation and employer's liability, global property, fiduciary liability, kidnap and ransom/extortion, directors and officers (D&O), employment practices liability.

⁷ [REDACTED]
⁸ [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

(Report)⁹ regarding certain intercompany transactions between [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED] [REDACTED]) with its related party, [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED] [REDACTED])¹⁰. The Report explains that [REDACTED] [REDACTED] is a wholly owned subsidiary of [REDACTED] [REDACTED] and,

[REDACTED] [REDACTED] manufactures medical products packing solutions, using certain raw materials and WIP¹¹ materials purchased from [REDACTED] [REDACTED] for sale to third-party customers in its local market. It also purchases finished medical packing products from [REDACTED] [REDACTED] for onward sale and distribution to third-party customers.

The Report described two types of transactions: the “sale of raw materials and WIP by [REDACTED] [REDACTED] to [REDACTED] [REDACTED] for subsequent manufacturing and distribution to third-party customers”; and the “sale of finished medical product packaging by [REDACTED] [REDACTED] to [REDACTED] [REDACTED] for resale to third-party customers”. The Report concluded that these transactions between [REDACTED] [REDACTED] and [REDACTED] [REDACTED] are “consistent with the arm’s length principle.” The Tax Commission agrees with the conclusion and found that the Report is irrelevant when determining whether there was unitary relationship between the [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. During the hearing, Berwind confirmed that there was no transfer pricing report between the [REDACTED] [REDACTED] and [REDACTED] [REDACTED].

The Tax Commission’s conclusion that the Report is irrelevant when deciding significant flows of value does not mean the Notice is entirely incorrect. However, it does raise some doubt as to the relevance of the other information reviewed by the Bureau. Therefore, as provided under

⁹ [REDACTED] engaged with [REDACTED] [REDACTED] to prepare a transfer pricing and economic analysis (Report) that evaluates the arm’s length nature of certain intercompany transactions entered by [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED] [REDACTED]) with its related party, [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED] [REDACTED]). The Report does not contain analysis of any intercompany transactions between and among [REDACTED] [REDACTED] and its subsidiaries, except for Petitioner.

¹⁰ [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED] [REDACTED]) is a foreign entity owned by [REDACTED] [REDACTED] [REDACTED] [REDACTED] (EIN [REDACTED] [REDACTED]). Petitioner directly owned [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] included it in their Idaho returns as it was a unitary member of Petitioner for the years under review.

¹¹ WIP stands for work-in-process.

Idaho Rule 341.02, the Tax Commission must now review whether there was “centralization of management”, “economies of scale”, and “functional integration”¹² between the [REDACTED] [REDACTED] and [REDACTED] to determine whether there were significant flows of value.

Centralization of management

The Notice explained that there was centralization of management as [REDACTED] and its subsidiaries, including the [REDACTED] [REDACTED] [REDACTED] and [REDACTED] shared multiple common officers and directors. The Tax Commission reviewed the lists of officers/directors¹³, showing each of the entities in the [REDACTED] [REDACTED] had two or three directors during the years under review, and at least two of the directors in the [REDACTED] [REDACTED] were also [REDACTED] directors. The protest explained that “[REDACTED] involvement is in a stewardship role, exercising limited oversight of its portfolio companies for the purpose of reviewing its return on investment, similar to what a bank or a Private Equity Fund could do with its investments.”

Idaho Rule 35.01.01.342.02.b. Stewardship Distinguished.

Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one (1) or more significant operating aspects of one (1) business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight.

¹² Idaho Rule 341.02 explains in part that 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.

¹³ Lists of officers and directors, provided by [REDACTED] and the Form 1125-E details, Form 1120, federal filed by [REDACTED]

The Tax Commission found that the involvement by two of [REDACTED] directors in the [REDACTED] [REDACTED] board meetings alone is not definitive evidence of centralized management as it could be only stewardship oversight.

Idaho Rule 342.02.a., states in part that, “[c]ommon officers are more likely to provide evidence of centralization of management than are common directors.” To identify common officers, the Tax Commission further reviewed the management hierarchy charts provided by [REDACTED] showing that each company had its own CEO, CFO, and managing officers in its business operations, i.e., marketing, operations, quality and engineering, customer service, human resources, and sales. The protest also explained,

Given the diverse industries of the portfolio companies and the specialized know-how required for their niche operations, [REDACTED] is neither involved with the day-to-day decisions nor the operations of the portfolio companies. Each of the portfolio companies operates autonomously from [REDACTED] with its own headquarters and executive/management team (i.e., a CEO, CFO, controller, HR leader, sales/marketing team, etc.), and that local executive/management team controls the day-to-day operations of the company.

The Tax Commission found that the [REDACTED] [REDACTED] maintained its own management/executive team and therefore there was no centralization of management.

Economies of scale

To investigate the unitary issue further, Appeals requested additional information, including, but not limited to, the detailed “to/from” analysis of intercompany transactions. Petitioner provided their “to/from” analysis, showing that there were some intercompany transactions, i.e., sales, interest, management fees, IT service fees, etc., between the [REDACTED] [REDACTED] and [REDACTED]. The sales, treated as intercompany transactions, were from [REDACTED] - [REDACTED] [REDACTED] a subsidiary acquired by [REDACTED] in 2018. Prior to the 2018 acquisition, the [REDACTED] [REDACTED] was a customer of [REDACTED] - [REDACTED] [REDACTED]. The relationship between the [REDACTED] [REDACTED] and [REDACTED] - [REDACTED]

██████ did not change after they became affiliated, and neither of them functionally integrated into each other or with ██████. As for the interest, treated as intercompany transactions, Petitioner argued that this is a cash sweep arrangement that the ██████ ██████ had with ██████ which is within the "type of occasional oversight-- with respect to capital structure, major debt, and dividends--that any parent gives to an investment in a subsidiary..." *F. W. Woolworth Co. v. Taxation & Revenue Dep't of N.M.*, 458 U.S. 354, 368-69 (1982)¹⁴. As for the management fees, Petitioner explained that, as part of the investment function, ██████ provided financial oversight and services, e.g., internal audit, income tax, etc., to the ██████ ██████ and charged service fees. Petitioner argued that the services performed by ██████ were "within what would be expected of a parent-subsidary relationship". *Tennaco W., Inc. v. Franchise Tax Board*, 234 Cal. App.3d 1510, 1528 (App. 4th Dist. 1991)¹⁵. There were service fees, i.e., administration of insurance benefit¹⁶, reimbursement of insurance premiums, IT support services, etc., Petitioner treated as intercompany transactions with ██████ and its subsidiaries. These service fees may be an indication of economies of scale; however, the amount of these transactions was minimal. The Tax Commission found that there were some flows of value but they were not significant enough to support the unitary relationship the Bureau asserted in the Notice.

Functional integration

Idaho Rule 342.01., states in part,

¹⁴ *F. W. Woolworth Co. v. Taxation & Revenue Dep't of N.M.*, 458 U.S. 354, 368-69 (1982), concluding that a unitary relationship did not exist between Woolworth and its subsidiary, despite that "major financial decisions, such as the amount of dividends to be paid by the subsidiaries and the creation of substantial debt, had to be approved by the parent."

¹⁵ *Tennaco W., Inc. v. Franchise Tax Board*, 234 Cal. App.3d 1510, 1528 (App. 4th Dist. 1991), affirming trial court's determination that Tenneco West's oil business was not unitary with its subsidiaries' shipbuilding, packaging, automotive parts and farm equipment businesses, despite that the parent provided centralized employee benefit plans, cash management, tax support, and internal audit, finding that "Tennaco's degree of centralized management was not strong but instead simply evidenced such corporate activities as would exist in most parent-subsidary relationships."

¹⁶ Health, prescription drug, dental and vision benefits.

Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes.

The Tax Commission reviewed whether there was any functional integration between/among the [REDACTED] [REDACTED] and [REDACTED] including its subsidiaries. Although, as previously stated in this decision, there was a sale treated as an intercompany transaction between the [REDACTED] [REDACTED] and a subsidiary of [REDACTED] however, it was minimal. There was no royalty or commission the [REDACTED] [REDACTED] paid to or received from [REDACTED] and its subsidiaries, which indicates that the [REDACTED] [REDACTED] retained its own patents, copyrights, trademarks, etc. The Tax Commission found no functional integration between the [REDACTED] [REDACTED] and [REDACTED]

These factors: centralized management, economies of scale, and functional integration, provide evidence as to whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. The Tax Commission found none of these factors support the unitary relationship the Bureau asserted in the Notice. However, before reaching a final determination in regard to whether there was a unitary relationship between Petitioner and [REDACTED] the Tax Commission will review Petitioner's filings to other states for state-to-state and year-to-year consistencies. To review state-to-state consistency, the Tax Commission requested copies of the state income tax returns Petitioner filed to California, Oregon, and Utah. Petitioner provided the [REDACTED] [REDACTED] state returns, which are just like the ones filed with Idaho, reporting its own income separately from [REDACTED] and its subsidiaries. Appeals compared each state's

returns, including Idaho returns, with the [REDACTED] [REDACTED] audited financial statements¹⁷ and found that these returns are consistent year to year.

The Tax Commission finds some flows of value, but they are not significant enough to prove that there was a unitary relationship between/among the [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] and its subsidiaries.

CONCLUSION

For the years under review, the Tax Commission determined that a unitary relationship did not exist between/among the [REDACTED] [REDACTED] and [REDACTED] including its subsidiaries, and found that the [REDACTED] [REDACTED] separately filed Idaho returns are correct.

THEREFORE, the Tax Commission CANCELS the Notice dated October 4, 2023, directed to Petitioner.

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

DATED this _____ day of _____ 2025.

IDAHO STATE TAX COMMISSION

¹⁷ The Tax Commission requested during the hearing, and Petitioner provided.

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]

