



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 6, 2023

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED]
Voluntary Redetermination Agreement Request

Dear [REDACTED]:

After reviewing the facts presented from submitted documentation and from information gathered from correspondence, we respectfully decline [REDACTED] request to file a U.S. water's edge unitary combined income tax return for the fiscal tax year beginning August 1, 2019. A summary of the relevant facts and basis of this conclusion is provided below.

The [REDACTED] is the publicly traded parent company of a family of businesses engaged in the development production and wholesale distribution of high quality, branded food and beverage products. Its shares trade on the New York Stock Exchange under the ticker symbol [REDACTED]. The [REDACTED] brands are well known throughout the U.S. and internationally. It is most notably recognized for its iconic [REDACTED] brand, [REDACTED], [REDACTED], [REDACTED] sauces, [REDACTED] and [REDACTED] snacks, and [REDACTED] juices. Its products are sold in approximately 120 countries around the world. It sells primarily to retail food chains, mass merchandisers, club stores, convenience stores, supermarkets and other retail establishments, which, in turn, sell to consumers.

Within the [REDACTED] affiliated group, [REDACTED] serves as the sales force for most of the brands. It solicits all customer sales on behalf of the U.S. soups, sauces and beverage brands in the [REDACTED] portfolio. It has primary responsibility for the acquisition of new customers, and customer service and satisfaction. It also has responsibility for administering and processing customer orders as well as over distribution of products. In addition to these responsibilities, [REDACTED] manages merchandising, shelf space, trade promotion and pricing of goods. [REDACTED] is compensated through an arrangement with its affiliates in which it purchases the goods that it will sell at a fixed discount relative to the price at which it will sell to its wholesale customers. The discount percentage is fixed in accordance with transfer

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pricing analysis and guidelines offered by [REDACTED], which the [REDACTED] has historically engaged for transfer pricing analysis.

N.C. Gen. Stat. § 105-130.5A(c) allows the Secretary discretionary authority to allow an alternative filing methodology “if the Secretary has reason to believe that any corporation’s State net income properly attributable to its business carried on in this State is not accurately reported on a separate return...because of intercompany transactions(.)” The Department has not recently examined [REDACTED] or its affiliated entities. Furthermore, [REDACTED] has not asserted to the Department that its intercompany pricing is not accurately reported on a separate entity basis. In fact, the transfer pricing planning study and associated intercompany agreements provided assert that the intercompany transactions are at arms-length. Thus, the Secretary is not willing to exercise his authority because [REDACTED] has not articulated or provided documentation for the rationale that N.C. Gen. Stat. § 105-130.5A(c) is warranted in this case.

The mere fact that a combined return would result in more “certainty in projecting and accounting for its North Carolina income tax liability,” than separate State income tax returns – even assuming such a representation could be accurately determined - does not establish that net income is not properly attributable to the State. In addition, a filing convenience for a taxpayer is not a standard to allow a redetermination under N.C. Gen. Stat. § 105-130.5A(c). Further, a redetermination letter is not intended to otherwise avoid a nexus determination or a separate entity corporate tax return filing responsibility required by statute. In the Department’s opinion, when a taxpayer asserts that intercompany transactions are at fair value and have economic substance, a remedy under N.C. Gen. Stat. § 105-130.5A(c) is not appropriate unless the Secretary determines that a remedy under other subsections of N.C. Gen. Stat. § 105-130.5A are not feasible or reliable to accurately determine the amount of State net income from intercompany transactions.

During or after an examination, the Taxpayer and Department may mutually determine that a combined filing is appropriate. However, the Department does not believe the current request establishes an adequate basis for a redetermination under N.C. Gen. Stat. § 105-130.5A(c).

Sincerely,

[REDACTED]

Anthony Edwards, Assistant Secretary
Tax Administration

cc: Ronald Penny, Secretary of Revenue
David Roseberry, Chief Operating Officer
John Seibert, Director of Corporate Tax
[REDACTED], CPA