

Taxpayer is granted permission to apportion interest income and income received from the sale of the right to receive future contingent payments by using the same apportionment factor for the year in which Taxpayer sold rights and property to a third party. (This is a PLR.)

August 2, 2022

NAME/TAXPAYER REPRESENTATIVE/ADDRESS

Re: Request for Private Letter Ruling – Alternative Apportionment
COMPANY1
FEIN: ##-#####
Tax Year Ended: 12/31/20##

Dear XXX:

This is in response to your letter dated April 5, 2022, in which you request a Private Letter Ruling (“PLR”) on behalf of COMPANY1 to use an alternative method of apportionment. Department of Revenue (“Department”) regulations require that the Department issue only two types of letter rulings: Private Letter Rulings (“PLRs”) and General Information Letters (“GILs”). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer issued the ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of Department policy that apply, interpret, or prescribe the tax laws and are not binding on the Department. See 2 Ill. Adm. Code Section 1200.100(b) and (c). Procedures for alternative allocation or apportionment petitions are outlined in 86 Ill. Adm. Code Section 100.3390. The petition procedures provided in this section are the exclusive means by which a taxpayer may petition for an alternative allocation or apportionment formula.

The Department has considered the petition and determined it satisfies the requirements in 86 Ill. Adm. Code Section 100.3390(c), (d), and (e). In addition, the review of your request for a PLR indicates that all information described in paragraphs 1 through 8 of subsection (b) of 2 Ill. Adm. Code Section 1200.110 is contained in your request.

The Department accepts the petition for alternative apportionment. Pursuant to 86 Ill. Adm. Code Section 100.3390(e)(1) and 2 Ill. Adm. Code Section 1200.110, the Department issues this PLR and grants permission to COMPANY1 to use an alternative apportionment formula. This PLR will bind the Department only with respect to COMPANY1 for the issues presented in this ruling. Issuance of this PLR is conditioned upon the understanding that COMPANY1 and/or any related taxpayer(s) is not currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented them in your letter are as follows:

TAXPAYER REPRESENTATIVE, on behalf of COMPANY1 ("COMPANY1", "Company" or "taxpayer"), requests a Private Letter Ruling regarding the use of an alternative apportionment method relating to certain receipts received during 20##. Please find attached an executed form IL-2848 Power of Attorney.

DISCLOSURES

In accordance with 2 Ill. Adm. Code Section 1200.110(b)(3), the subject of this request is not being examined as part of an audit by the Illinois Department of Revenue ("Department").

In accordance with 2 Ill. Adm. Code Section 1200.110(b)(4), in 2019 the taxpayer requested and received a favorable ruling authorizing the use of an alternative apportionment method and this ruling request is an extension of said earlier issued Private Letter Ruling. (see Private Letter Ruling Issued December 17, 2019 attached) In addition, neither the taxpayer nor its representatives have previously submitted the same or a similar issue to the Department and withdrew it before a letter ruling was issued.

TAX YEAR

The ruling is requested for tax year ended on 12/31/20##.

TAXPAYER

COMPANY1 is a limited liability company ("LLC") and is treated as a partnership for federal income tax and Illinois personal property replacement income tax ("Income Tax") purposes. COMPANY1 has a calendar year ending December 31st.

STATEMENT OF FACTS

As provided in the 2019 Private Letter Ruling, COMPANY1 (formerly COMPANY2 HOLDINGS, "COMPANY2 HOLDINGS") is a privately held biopharmaceutical company currently headquartered in CITY1, STATE1. COMPANY1 is a regarded entity treated as a partnership for federal and state Income Tax purposes. COMPANY1 has a wholly owned subsidiary, COMPANY1 HOLDINGS ("COMPANY1 HOLDINGS") (formerly COMPANY2, "COMPANY2"). COMPANY1 HOLDINGS is a disregarded LLC for federal and state Income Tax purposes.

COMPANY2 was founded in 20## and was headquartered in CITY2, STATE1 with additional locations in CITY1, CITY3, STATE2 and STATE3. From inception through February 20##, COMPANY2 core business was the manufacturing, distribution, and retail sale of approved pharmaceutical products to pharmaceutical wholesalers. In February of 20##, COMPANY2 divested the intellectual property associated with most of its approved pharmaceutical

products and devoted its efforts on advancing its drug development program. COMPANY2 focused all its resources on the development of PRODUCT1 and PRODUCT2 with the goal of US regulatory approval and commercial launch of the associated pharmaceutical products to wholesalers.

Following several years of clinical development activity, the COMPANY1 accumulated sufficient clinical, manufacturing, and technical data to submit a drug application to the US Food and Drug Administration ("FDA") in June of 20## seeking US regulatory approval for PRODUCT1. Concurrently to the submission, the COMPANY1 began its launch readiness efforts, including hiring ## employees, including field-based sales representatives, sales and marketing executives, managed care and supply chain management specialists and back-office infrastructure support teams. In advance of the launch, the COMPANY1 entered into contracts for warehousing and logistics management, order to cash management and other on-going requirements for US drug sellers such as the Affordable Care Act reporting.

In February 20##, COMPANY2's new drug application for PRODUCT1 was approved by the FDA under the trade name PRODUCT3. At the time of approval, COMPANY2 announced that the product would be launched by the Company. Shortly thereafter, because of market and industry factors, COMPANY2 concluded that an outright sale of the rights to PRODUCT3 would result in more value than a commercial launch of the drug.

On March ## 20##, COMPANY2 sold the rights to PRODUCT3 to COMPANY3, an unrelated pharmaceutical company, for \$\$. As part of the sale of PRODUCT3, COMPANY2 sold all associated inventory, all intellectual property, all world-wide regulatory filings, all product books and records, all product materials and data, all bottling machinery and equipment and all goodwill associated with PRODUCT3. At that time, COMPANY2 initiated a workforce reduction and terminated all but ## of its employees over the period from April 20## to June 20## (a total of ## employees). The ## remaining employees were terminated on September ##, 20##.

In addition to the \$\$ received in 20##, the sales contract called for contingent payments ("Earn-Outs") based on the buyer's net sales beginning in 20##. There was a \$\$ cap placed on the Earn-Outs. Also included as part of the consideration was a one-time Milestone payment of \$\$ if the "Milestone Event" as defined in the asset purchase agreement was achieved.

COMPANY1 excluded the gain from sale of the intangible and personal property on its 20## Illinois partnership return as an occasional sale. The sale of the intangibles could also be viewed as a sale of an intangible covered under Illinois Income Tax Act ("ITA") Sections 304(a)(3)(B-1 and B-2) and the proceeds from the sale of the intangibles would also be excluded from the Illinois sales factor

numerator and denominator. COMPANY1's Illinois apportionment factor for the 20## tax year was %%%.

In 20##, COMPANY2 changed its name to COMPANY1 HOLDINGS and COMPANY2 HOLDINGS changed its name to COMPANY1. COMPANY1 HOLDINGS is a SMLLC and is owned %%% by COMPANY1, a partnership for federal and Illinois income tax purposes. During 20##, COMPANY1 HOLDINGS received two Earn-Out payments totaling some \$\$\$ relating to the 20## sale of PRODUCT3. In December 20##, COMPANY1 HOLDINGS entered into a Contingent Payment Agreement ("Agreement") with COMPANY4 ("COMPANY4"), an unrelated third party. Under the terms of the Agreement, COMPANY1 HOLDINGS sold the rights to certain future Earn-Out payments. COMPANY1 HOLDINGS sold the contractual rights to the Earn-Out payments for \$\$\$\$. COMPANY1 HOLDINGS retained the rights to the Milestone payment and to certain future Earn-Out payments if certain sales of the drug were achieved.

In 20##, other than the Earn-Out payments and the proceeds from the Agreement, COMPANY1's only income was from portfolio interest income and imputed interest income on the Earn-Out payments. Although COMPANY1 is still in existence as a legal entity, it is no longer an active company, has no employees and no physical locations.

In the 2019 issued Private Letter Ruling, the Department permitted COMPANY1 the use of alternative apportionment method based on the 20## apportionment factor for the Earn-Out payment. This was the year of the sale of PRODUCT3. In addition, the PLR stated that "you (Taxpayer) may use the same methodology for future taxable years with respect to any Earn-Out payments (including the Milestone payment) received."

During 20##, COMPANY1 HOLDINGS only received portfolio interest income. They did not receive any Earn-Out payments nor Milestone payments.

In December 20##, COMPANY4 purchased an additional tranche from COMPANY1 HOLDINGS for the right to receive future Earn-Out payments. COMPANY4 paid COMPANY1 HOLDINGS \$\$\$ for the rights to receive %%% of the Earn-Out payments paid to COMPANY1 HOLDINGS through December ##, 20##, and %%% of the first \$\$\$ in Earn-Out payments beginning in the period starting January ##, 20##. COMPANY1 HOLDINGS retained all other Earn-Out payments as well as the Milestone payment.

During 20##, COMPANY1 only received interest income and the \$\$\$ from the sale of the right to receive future Earn-Out payments. COMPANY1 did not receive any Earn-Out or Milestone payments in 20##.

RULING REQUESTED

COMPANY1 requests the use the same alternative apportionment method that the Department authorized in the 2019 Private Letter Ruling to be applied against the \$\$\$ that Taxpayer received in 20## from the sale of the right to receive certain future Earn-Out payments.

If COMPANY1 receives any payment for the sale of any future Earn-Out payments or the sale of the Milestone payment, COMPANY1 further requests the use of the same alternative apportionment that was permitted in the 2019 Private Letter Ruling to be applied to these payments.

DISCUSSION

In 20##, COMPANY1 earned only two types of income. They earned interest from cash on deposit maintained to service tax obligations. The other receipt is the \$\$\$ of income that was earned when they sold the rights to certain future Earn-Out payments.

Interest Income Sourcing

The sourcing of interest is governed by IITA Section 304(a)(3)(C-5)(iii) (a) and (b). Subsection (a) addresses the sourcing of interest if the taxpayer is a dealer. For purposes of this ruling request, it is presumed that COMPANY1 is not a dealer in the item of interest so the sourcing of the interest would be governed by subsection (b). This subsection provides that interest is sourced to Illinois, "if the income-producing activity of the taxpayer is performed in this State or, if the income-producing activity of the taxpayer is performed both within and without this State, if a greater proportion of the income-producing activity of the taxpayer is performed within this State than in any other state, based on performance costs." Based on this sourcing provision, 100% of the interest from various bank accounts would be sourced to Illinois, the commercial domicile of COMPANY1.

Income from the sale of the intangible right to receive future Earn-Out payments

The other receipt that that COMPANY1 received during 20## is the proceeds from the sale of certain Earn-Out rights to future payments. In this sale, COMPANY1 sold most of it rights to the future Earn-Out payments. COMPANY1, continued to retain the rights to the Milestone payment. The sale of Earn-Out rights was a sale of an intangible. In general, net gains from the sale of an intangible are governed by IITA Section 304(a)(3)(C-5)(iii)(a) and (b). However, Illinois has an "incidental or occasional sale" provision which would eliminate these net proceeds from COMPANY1's Illinois sales factor.

On August 27, 2017, the Department revised 86 Ill. Admin. Code Section 100.3380(c)(2) to provide the following:

When gross receipts arise from an incidental or occasional sale of assets used in the regular course of the person's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross

receipts from the sale of a factory or plant will be excluded. Gross receipts from an incidental or occasional sale of stock in a subsidiary will also be excluded. Exclusion of these gross receipts from the sale factor is appropriate for several reasons, more than one of which may apply to a particular sale, including:

- A. incidental or occasional sales are not made in the market for the person's goods, services or other ordinary sources of business income;
- B. to the extent that gains realized on the sale of assets used in a taxpayer's business are comprised of recapture of depreciation deductions, the economic income of the taxpayer was understated in the years in which those deductions were taken. The recapture gains that reflect a correction of that understatement should be allocated using a method approximating the factors that were used in apportioning the deductions. If the business otherwise remains unchanged, including the gross receipts from the sale in the sales factor numerator of the state in which the assets were located would allocate a disproportionate amount of the recapture gains to that state compared to how the deductions being recaptured were allocated;
- C. to the extent the gain on the sale is attributable to goodwill or similar intangibles representing the value of customer relationships, including the gross receipts from the sale in the sales factor will not reflect the market for the taxpayer's goods, services or other ordinary sources of business income to the extent the sourcing of the receipts from that sale differs from the sales factor computed without regard to that sale; and
- D. in the case of sales of assets that are made in connection with a partial or complete withdrawal from the market in the state in which the assets are located, including the gross receipts from those sales in the sales factor would increase the business income apportioned to that state when the taxpayer's market in that state has decreased.

The purpose of 86 Ill. Admin. Code Section 100.3380(c)(2) is to exclude from both the numerator and denominator of the sales factor gross receipts from a transaction that, while generating business income, does not arise from transactions and activity that may be regarded as the taxpayer's regular or ordinary course of business. The sale of the future Earn-Out rights is an isolated transaction not made in COMPANY1's market for its goods, services or other

ordinary sources of COMPANY1s business income. As an isolated or occasional sale, the net gain from the sale of the Earn-Out rights would be excluded from the numerator and denominator of the Illinois sales factor.

Assuming that the net gain from the sale of the Earn-Out rights is excluded from the Illinois sales factor numerator and denominator. Illinois would apportion all income earned in 20## based on COMPANY1's interest received. In essence, without the use of an alternative apportionment method, Illinois would source 100% of COMPANY1's income to Illinois.

COMPANY1 maintains that the use of 100% apportionment does not fairly reflect the sale of the Earn-Out rights and Earn-Out payments activities in Illinois and is requesting the use of an alternative apportionment method.

IIITA Section 304(f) Alternative allocation provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not, for taxable years ending before December 31, 2008, fairly represent the extent of a person's business activity in this State, or, for taxable years ending on or after December 31, 2008, fairly represent the market for the person's goods, service or other sources of business income, the person may petition for, or the Director may, without a petition, permit or require, in respect of all or any part of the person's business activity, if reasonable: (1) Separating accounting; (2) The exclusion of any one or more factors; (3) The inclusion of one or more additional factors which will fairly represent the person's business activities or market in this State; or (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

On August 3, 2017, the Department modified its regulations for petitioning for alternative apportionment 86 Ill. Admin. Code Section 100.3390. Under 86 Ill. Admin. Code Section 100.3390(e) Timely Filed Petitions:

A taxpayer petition for use of a separate accounting method or any other alternative apportionment method will not be considered by the Director unless such petition has been timely filed. A taxpayer who petitions the Director for an alternative apportionment formula does so subject to the Department's right to verify, by audit of the taxpayer's return and supporting books and records within the applicable statute of limitations, the facts submitted as the basis of the petition. A petition for alternative allocation or apportionment is timely filed if the petitions is filed:

(e)(1) 120 days prior to the date of the tax return (including extensions) for which permission to use such alternative method is sought. A taxpayer

who does not petition more than 120 days prior to the due date of the original return must file their return and pay tax according to the statutorily approved apportionment method.

In IT 13-0003-PLR, 9/18/2013, the taxpayer requested the use of an alternative apportionment where the only activity in the tax year was the sale of the taxpayer's real property located in Illinois that was formerly used in the taxpayer's trade or business. As a result of the application of the incidental or occasional sale provision, the sale of the taxpayer's real property could not be included in the taxpayer's Illinois sales factor. The taxpayer was left with no sales factor in Illinois to apportion the gain from the sale of the real property. In this matter, the taxpayer was able to show that the standard apportionment formula would have apportioned zero income to Illinois; did not fairly represent that market for the taxpayer's goods, services, or other sources of business income in Illinois and was permitted the use of an alternative apportionment method.

In the facts presented herein, the exclusion of the proceeds from the sale of the right to the future Earn-Out payments from the sales factor would result in the sourcing of this income to Illinois based on COMPANY1's interest income sourced 100% to Illinois. Similar to sourcing none of the proceeds from the sale of the proceeds from the sale of the real property, the sourcing 100% of the proceeds from the sale of the future Earn-Out payments does not fairly represent the market for the taxpayer's goods, services or other sources of business income and the use of an alternative apportionment method is warranted. The sourcing of interest income to Illinois should not be used to determine the sourcing of the proceeds from the sale of the rights to the future Earn-Out payments.

We are requesting under IITA Section 304(f) and 86 Ill. Admin. Code Section 100.3390(e)(1) the use of an alternative apportionment method because we believe that the application of the required statutory formula for apportionment will lead to a grossly distorted result. We request to use the Illinois apportionment percentage that COMPANY1 had in Illinois for 20##. This percentage was %%%. This is the year the COMPANY1 sold the drug PRODUCT3 to a third-party pharmaceutical. The Earn-Out payments ultimately relate to this initial sale. This was the alternative apportionment method that was permitted in the 2019 Private Letter Ruling.

Should the Department grant the Company's request for the use of an alternative apportionment for 20##, the Company would be interested in applying the same alternative apportionment methodology for any future sale of any Earn-Out payments or the sale of the Milestone payment currently retained by the Company.

PROCEDURAL MATTERS

TAXPAYER REPRESENTATIVE is requesting this Private Letter Ruling on behalf of said taxpayer. Please contact me at ###-###-####, or NAME2 at ###-###-#### or NAME3 at ###-###-#### should you have questions or require additional information. If the Department determines that alternative apportionment is not warranted, we respectfully request a conference to discuss this matter in further detail and reserve the right to withdraw this Private Letter Ruling request.

RULING

Section 304(a) of the Illinois Income Tax Act ("IITA", 35 ILCS 5/304(a)) provides that when a nonresident derives business income from Illinois and one or more other states, such income shall be apportioned to Illinois by multiplying the income by the taxpayer's apportionment factor. Section 304(h) of the IITA provides for taxable years ending on and after December 31, 2000, the apportionment factor for taxpayers apportioning business income under Section 304(a) is equal to the sales factor. Section 304(a)(3)(A) of the IITA defines the sales factor as follows:

The sales factor is a fraction, the numerator of which is the total sales of the person in this State during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year.

The term "sales" is defined under Section 1501(a)(21) of the IITA to mean all gross receipts of the taxpayer not allocated under Sections 301, 302, and 303.

Section 304(f) of the IITA provides:

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

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

86 Ill. Adm. Code Section 100.3390 outlines the procedures in which a taxpayer may petition the Department for an alternative allocation or apportionment formula. The

burden of proof for alternative allocation or apportionment petitions is explained in Section 100.3390(c):

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

86 Ill. Adm. Code Section 100.3380 provides special rules regarding Section 304 of the IITA. This section provides in relevant part:

a) 2) Director's Determination

The Director has determined that, in the instances described in this Section, the apportionment provisions provided in IITA Section 304(a) through (e) and (h) do not fairly represent the extent of a person's business activity or market within Illinois.

c) Sales Factor. The following special rules are established in respect to the sales factor in IITA Section 304(a)(3):

- 2) When gross receipts arise from an incidental or occasional sale of assets used in the regular course of the person's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts

from the sale of a factory or plant shall be excluded. Gross receipts from an incidental or occasional sale of stock in a subsidiary shall also be excluded. Exclusion of these gross receipts from the sales factor is appropriate for several reasons, more than one of which may apply to a particular sale, including:

- A. incidental or occasional sales are not made in the market for the person's goods, services or other ordinary sources of business income;
- B. to the extent that gains realized on the sale of assets used in a taxpayer's business are comprised of recapture of depreciation deductions, the economic income of the taxpayer was understated in the years in which those deductions were taken. The recapture gains that reflect a correction of that understatement should be allocated using a method approximating the factors that were used in apportioning the deductions. If the business otherwise remains unchanged, including the gross receipts from the sale in the sales factor numerator of the state in which the assets were located would allocate a disproportionate amount of the recapture gains to that state compared to how the deductions being recaptured were allocated;
- C. to the extent the gain on the sale is attributable to goodwill or similar intangibles representing the value of customer relationships, including the gross receipts from the sale in the sales factor shall not reflect the market for the taxpayer's goods, services or other ordinary sources of business income to the extent the sourcing of the receipts from that sale differs from the sales factor computed without regard to that sale; and
- D. in the case of sales of assets that are made in connection with a partial or complete withdrawal from the market in the state in which the assets are located, including the gross receipts from those sales in the sales factor would increase the business income apportioned to that state when the taxpayer's market in that state has decreased.

Your letter represents on March ##,20##, COMPANY1 ("Taxpayer") sold substantially all of the assets used in its trade or business, including the rights to PRODUCT3 and all associated assets, to a third-party purchaser for an immediate cash payment plus the third-party purchaser's obligation to make certain contingent payments in future taxable years. Further, your letter represents in December 20##, Taxpayer entered into a contingent payment agreement with an unrelated party for the sale of the rights to the certain contingent payments in future taxable years. In December 20##, this unrelated third party purchased an additional tranche from Taxpayer for the right to receive future

contingent payments. During 20##, Taxpayer only received interest income and the proceeds from the additional tranche.

Based on the facts as described in your letter, the March ##, 20##, asset sale constituted an incidental or occasional sale of assets used in the regular course of business pursuant to 86 Ill. Adm. Code Section 100.3380. Therefore, the gross receipts from such sale must be excluded from the Taxpayer's sales factor.

Your letter indicates that Taxpayer's sale of PRODUCT3 and associated assets qualified as a contingent payment sale under Treasury Regulations Section 15a.453-1(c), which requires that such sales be reported under the installment method. Under the installment method, gain from the asset sale is taken into account proportionately as payments are received based on the ratio of the gross profit realized or to be realized over the total contract price. Under Treasury Regulations Section 15a.453-1(c)(2)(i), the stated maximum selling price is treated as the selling price (and thus included in the contract price) for purposes of applying the installment method. The contract price does not include interest, whether stated or unstated, or original issue discount.

Where an occasional sale of assets is reported under the installment method, the portion of the contract price received during the taxable year must be excluded from the sales factor under 86 Ill. Adm. Code Section 100.3380. In addition, under Internal Revenue Code Section 453B and Treasury Regulations Section 1.453-9(a), the entire amount of gain or loss on the sale of an installment obligation is recognized in the taxable year of sale and is considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received. Accordingly, where the taxpayer sells an installment obligation received by the taxpayer in connection with an incidental or occasional sale of assets, gross receipts from the sale of the installment obligation must likewise be excluded from the sales factor pursuant to 86 Ill. Adm. Code Section 100.3380.

On December 17, 2019, the Department issued Taxpayer a PLR granting permission to use an alternative apportionment method as the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) of IITA Section 304 do not fairly represent the market for Taxpayer's goods, services, or other sources of business income. In applying the provisions of 86 Ill. Adm. Code Section 100.3380 to the facts, the PLR outlined that Taxpayer "must exclude from its sales factor the \$\$\$ of Earn-Out payments received in 20##, as well as the \$\$\$ received in 20## from its sale of the Earn-Out rights." In addition, "any Earn-Out payments received in future taxable years (including the Milestone payment) must be excluded from Taxpayer's sales factor." For the 20## taxable year, Taxpayer was permitted to compute its apportionment factor "by including in the numerator of the sales factor the percentage of the net gain taken into account on payments received in 20## under the installment obligation, plus the net gain taken into account from the sale of the installment obligation, equal to Taxpayer's 20## Illinois apportionment factor (which you represent to be %%%)." The entire net gain was to be included in the denominator, and 100% of

the interest income taken into account in 20## (including imputed interest taken into account, if any) was to be included in the numerator of the sales factor (with the same amount included in the denominator). The PLR permitted the same methodology for future taxable years with respect to any Earn-Out payments (including the Milestone payment) received and including 100% of the interest income taken into account in future taxable years (including imputed interest) in the numerator of the sales factor.

The Department renews the 2019 PLR and permits the same alternative apportionment methodology authorized in 2019 to be applied against the interest income Taxpayer received in 20## and the \$\$\$ Taxpayer received in 20## from the sale of the right to receive certain future Earn-Out payments. Taxpayer may compute its apportionment factor for the 20## taxable year by using its Illinois apportionment percentage for the 20## taxable year (which you represent to be %%%) to source the proceeds from the sale of the right to receive certain future Earn-Out payments. Taxpayer may use the same methodology for future taxable years with respect to any Earn-Out payments received (including the Milestone payment) and 100% of the interest income (including imputed interest) taken into account in the numerator of the sales factor. In addition, the Department permits Taxpayer to apply this same alternative apportionment methodology for future taxable years with respect to any payment received from the sale of rights to certain future Earn-Out payments pursuant to a contingent payment agreement.

Except as provided herein, this ruling shall bind the Department for the taxable year ending December 31, 20##. The facts upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing, and this ruling shall bind the Department only if the facts as recited and incorporated in this ruling are correct and complete. This ruling shall bind the Department for the taxable year specified above and is revoked and will cease to bind the Department 10 years after the date of this ruling under the provisions of 2 Ill. Adm. Code Section 1200.110(d) and (e), or earlier if there is a pertinent change in statutory law, case law, rules, or in the facts recited in this ruling.

Sincerely,

Jennifer Uhles
Associate Counsel (Income Tax)