

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

CARDINAL HEALTH, INC. AND
AFFILIATES

Petitioner,

vs.

ILLINOIS DEPARTMENT OF REVENUE

Respondent.

Case Nos. 19 TT 76 and 19 TT 77

Judge Brian F. Barov

**UNOPPOSED MOTION FOR LEAVE
TO FILE FIRST AMENDED PETITIONS *INSTANTER***

Petitioner, Cardinal Health, Inc., together with its affiliates (collectively, “Petitioner”), by and through its attorneys, Baker & McKenzie LLP, hereby moves the Illinois Independent Tax Tribunal (the “Tax Tribunal”) to grant Petitioner’s **Unopposed Motion for Leave to File First Amended Petitions *Instanter***. In support of this Motion, Petitioner states the following:

1. A petition filed in the Tax Tribunal may be amended at any time before final judgment. *See* 735 ILCS 5/2-616(a) (“At any time before final judgment amendments may be allowed on just and reasonable terms ... changing the cause of action ... or adding new causes of action ... and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought ...”); and 35 ILCS 1010/1-50(c) (“The Tax Tribunal shall freely grant consent to amend upon such terms as may be just.”).
2. Original petitions for Case Nos. 19 TT 76 and 19 TT 77 were filed on May 16, 2019 addressing Petitioner’s taxable periods 2011-2014 (collectively, the “Period at Issue”).
3. Petitioner seeks to amend its original petition for Case No. 19 TT 76 by adding Count VII, “Intercompany Expense Addback Is Improper.” A copy of the “First Amended

- Petition” for Case No. 19 TT 76 is attached hereto as Exhibit 1.
4. Petitioner seeks to amend its original petition for Case No. 19 TT 77 by adding Count VI, “Intercompany Expense Addback Is Improper.” A copy of the “First Amended Petition” for Case No. 19 TT 77 is attached hereto as Exhibit 2.
 5. Amending the original petitions to include these additional counts is necessary for Petitioner to allege that Respondent improperly added back to Petitioner’s taxable income certain interest expense and royalty fees paid to related affiliates which were subject to a tax measured by net income in a foreign country during the Period at Issue. *See* 35 ILCS 5/203(b)(2)(E-12)(i) and (E-13)(i) and Ill. Admin. Code tit. 86, § 100.2430(c)1)(A) and (c)(2)(A).
 6. No final judgment has been issued in the above-captioned matters.
 7. Amending the petitions will not prejudice Respondent.
 8. Respondent stated it is unopposed to this Motion.
 9. This is Petitioner’s first request for leave to amend its petitions in the above-captioned matters.
 10. This Motion is not brought for purposes of delay.

WHEREFORE, Petitioner respectfully requests the Tax Tribunal enter an order: (1) granting Petitioner leave to file *instanter* the First Amended Petitions; and (2) providing any such additional relief as the Tax Tribunal deems just and proper.

DATED: January 12, 2023

Respectfully submitted,

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EXHIBIT 1

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

CARDINAL HEALTH 110, LLC AND
AFFILIATES

Petitioner,

vs.

ILLINOIS DEPARTMENT OF REVENUE

Respondent.

Case No. 19 TT 76

FIRST AMENDED PETITION

Cardinal Health 110, LLC (“CH110”), together with its affiliates (collectively referred to herein as “Cardinal Health” or “Petitioner”), by and through its attorneys, Baker & McKenzie LLP, who are duly authorized to represent Petitioner in this regard pursuant to the Power of Attorney attached hereto as **Exhibit A**, hereby petitions the Illinois Independent Tax Tribunal to review and reverse the Notices of Deficiency issued by the Illinois Department of Revenue (“Department”) as follows:

PARTIES

1. Petitioner is a multistate business enterprise that engages in business through a number of affiliates.
2. Petitioner maintains its corporate headquarters at 7000 Cardinal Place, Dublin, Ohio, 43017, and its telephone number is 614-757-5000.
3. For purposes of filing an Illinois unitary combined group tax return for the tax years ending 2011, 2012, and 2013 (the “Period at Issue”), Petitioner’s designated agent is CH110. CH110’s federal identification number is 68-0158739.

4. The Department is an agency of the State of Illinois and is responsible for administering and enforcing the revenue laws of the State of Illinois.

JURISDICTION

5. On or about March 19, 2019, the Department issued Notices of Deficiency (“Notices”) to Petitioner assessing corporation income tax, penalties and interest for the Period at Issue, letter IDs CNXXXXXX62X712483, CNXXX14X516X1443 and CNXXX133X41X3521, respectively. Copies of the Notices are attached hereto as **Exhibit B**.
6. This Tribunal has original jurisdiction over all Department determinations reflected on Notices of Deficiency, among other notices, where the amount at issue exceeds \$15,000, exclusive of penalties and interest. 35 ILCS 1010/1-45.
7. The amount at issue in this matter exceeds \$15,000 exclusive of penalties and interest such that this Tribunal has original jurisdiction over the matter.

BACKGROUND

8. Petitioner is a worldwide business enterprise engaged in the marketing, sale and distribution of pharmaceutical and medical products to hospitals, clinics, government agencies and retail pharmacies nationwide.
9. Cardinal Health 411, Inc. (“CH411”) is an affiliate of CH110 and is included in Petitioner’s Illinois unitary group for tax purposes for the Period at Issue.
10. CH110 and CH411 have employees in numerous states, and both are primarily engaged in the wholesale distribution of pharmaceutical products to and the performance of various pharmacy

management services for its customers nationwide as part of Petitioner's multistate business enterprise.

11. In states where it has no employees, CH411 relies on affiliates to perform various functions on its behalf for purposes of maintaining a market for its products in those states and furthering business relationships with its customers.
12. One such affiliate working on behalf of CH411 is CH110.
13. CH110 employs Pharmacy Business Consultants ("PBCs"), who make in-person visits to CH411 customers in states nationwide, including, but not limited to, Indiana, Michigan, and Wisconsin.
14. PBCs keep detailed records of their sales, services, and other activities performed on behalf of CH411's customers including providing technical assistance, addressing customer complaints / issues, collecting on accounts, and setting up and training customers on how to operate the inventory management program to purchase products from CH411 and other Cardinal Health affiliates.
15. The services provided by PBCs are integral in generating CH411's customer base and business activities in Indiana, Michigan, and Wisconsin and are essential to maintaining its market in these states and others.
16. Based on the physical presence of the employees of its affiliates including, but not limited to, PBCs who maintain customer relationships and perform services and other activities on behalf of CH411 in each state, CH411 files and pays tax on its income on either a separate return, or as part of a unitary combined group return in Indiana, Michigan, and Wisconsin, among other states.

17. Based on the physical presence of the employees of its affiliates including, but not limited to, PBCs who maintain customer relationships and perform services and other activities on behalf of CH411 in each state, CH411's sales / receipts are included in the numerators of the sales factor reported on either a separate return, or the unitary combined group return, in the states of Indiana, Michigan and Wisconsin, among others.
18. CH411 sold pharmaceutical products to customers located in Indiana, Michigan, and Wisconsin, among others, well in excess of \$100,000 in each state during the Period at Issue.
19. CH411 engaged in thousands of transactions with customers located in Indiana, Michigan, Wisconsin and other states during the Period at Issue.
20. Based on the activities performed on its behalf in Indiana, Michigan, Wisconsin, and other states, CH411 files and pays tax on its income on either a separate return, or as part of a unitary combined group return in Indiana, Michigan, and Wisconsin, among other states.
21. The Department audited Petitioner's Illinois corporation income tax returns for its tax years ending 2011, 2012 and 2013.
22. Based on its audit, the Department adjusted Petitioner's income apportioned to Illinois by improperly including certain receipts of CH411 in the numerator of Petitioner's Illinois sales factor (i.e., these sales were "thrown back" or "reverted" to Illinois). Specifically, the Department included approximately \$6.9 billion, \$6.8 billion and \$5.6 billion in additional receipts in the numerator of Petitioner's Illinois sales factor for tax years ending 2011, 2012 and 2013, respectively.
23. The "thrown back" sales at issue were shipped from CH411's distribution center in Aurora, Illinois, to purchasers located almost entirely in the states of Indiana, Michigan, and Wisconsin.

A relatively small amount of sales were also shipped to purchasers located in Florida, Georgia, Iowa, Kentucky, Massachusetts, Missouri, Mississippi, North Carolina, New Jersey, Pennsylvania, and Tennessee.

24. The Department's position is that these sales originating from Petitioner's distribution center and shipped to out-of-state purchasers are "Illinois sales" and must be thrown back to Illinois because Petitioner is not "subject to tax" in Indiana, Michigan, Wisconsin and other states.

COUNT I

CH411 IS SUBJECT TO TAX AND, IN FACT, PAID TAX ON OUT-OF-STATE SALES TO CUSTOMERS IN INDIANA, MICHIGAN, WISCONSIN AND OTHER STATES

25. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 24 as if fully set forth herein.

26. In the Notices, the Department overstates Petitioner's income apportionable to Illinois by improperly "throwing back" CH411's sales made to customers in Indiana, Michigan, Wisconsin and other states for purposes of computing Petitioner's Illinois sales factor.

27. CH411 was subject to a net income tax in Indiana, Michigan, Wisconsin and other states during the Period at Issue.

28. CH411 filed separate corporate net income tax returns and paid tax in Indiana during the Period at Issue.

29. CH411 filed corporate net income tax returns and paid tax as part of Petitioner's unitary combined group in Michigan for the Period at Issue.

30. CH411 filed corporate net income tax returns and paid tax as part of Petitioner's unitary combined group in Wisconsin for the Period at Issue.

31. CH411 included its sales to Indiana customers in the numerator of its Indiana sales factor reported on each of its Indiana corporate tax returns for the Period at Issue (e.g., approximately \$3 billion each for tax years ending 2011 and 2012 and \$2 billion for tax year ending 2013).
32. CH411 included its sales to Michigan customers in the numerator of Petitioner's Michigan sales factor reported on each of Petitioner's Michigan corporate tax returns for the Period at Issue (e.g., approximately \$1 billion each for tax years ending 2011, 2012 and 2013).
33. CH411 included its sales to Wisconsin customers in the numerator of Petitioner's Wisconsin sales factor reported on each of Petitioner's Wisconsin corporate tax returns for the Period at Issue (e.g., approximately \$2 billion each for tax years ending 2011, 2012 and 2013).
34. Under Illinois's throwback statute for purposes of computing the Illinois sales factor, "[s]ales of tangible personal property are in this state if . . . The property is shipped from an office, store, warehouse, factory or other place of storage in this State and . . . the person is not taxable in the state of the purchaser" 35 ILCS 5/304(a)(3)(B)(ii).
35. Illinois authority provides that a taxpayer is taxable in another state, and its sales may not be thrown back to Illinois, if "(1) In that state he is subject to a net income tax . . . or (2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not." 35 ILCS 5/303(f); Ill. Admin. Code tit. 86 § 100.3200(1).
36. Department regulations further provide that "[a] taxpayer claiming to be taxable in another state . . . must establish not only under the laws of that state he or she is subject to one of the specified taxes [e.g. corporate net income tax], but that he or she, in fact, pays the tax." Ill. Admin. Code tit. 86 § 100.3200(2).

37. Based on the activities of PBCs, CH411 has physical presence in the states of Indiana, Michigan, and Wisconsin, among others.
38. PBCs acting on behalf of CH411 perform various in-person activities dedicated to maintaining CH411's market in Indiana, Michigan, Wisconsin and other states.
39. Under Illinois law, CH411 is subject to tax in Indiana, Michigan, Wisconsin and other states, because it has a physical presence there by virtue of PBCs acting on its behalf in those states. *See e.g.*, Ill. Admin. Code tit. 86, § 100.9720(c)(4) (providing a non-exhaustive list of activities that will render a taxpayer "subject to tax," including "collecting current or delinquent accounts . . . installation or supervision of installation after shipment or delivery . . . conducting training . . . providing any kind of technical assistance[,]” among others).
40. Under Indiana law, CH411 is subject to tax in Indiana because it has a physical presence there by virtue of PBCs acting on its behalf in those states. *See e.g.* Ind. Code § 6-3-2-2(a)(2); Ind. Admin. Code 3.1-1-38(4).
41. Under Michigan law, CH411 is subject to tax in Michigan because it has a physical presence there by virtue of PBCs acting on its behalf in those states. Mich. Comp. Laws Ann. § 206.621(2)(b).
42. Under Wisconsin law, CH411 is subject to tax in Wisconsin because it has a physical presence there by virtue of PBCs acting on its behalf in those states. Wis. Admin. Code Tax 2.82(4).
43. PBCs provide several of the services that make a taxpayer "subject to tax" under Section 100.9720(c)(4), including, but not limited to, providing technical assistance, addressing customer complaints / issues, collecting on accounts, and setting up and training customers on how to operate the inventory management program to purchase products from CH411.

44. The Department has argued in other cases that Illinois follows an economic nexus standard. *See e.g., Capital One Fin. Corp v. Illinois Department of Revenue*, No. CSP048, 2015 BL 396584 (Ill. Cir. Ct. May 11, 2015).
45. If an economic nexus standard applies in Illinois for corporate net income tax purposes, CH411's sales in Indiana, Michigan, and Wisconsin exceed constitutional thresholds for economic nexus in Indiana, Michigan, Wisconsin and other states. *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018).
46. The activities of PBCs are more substantial than "mere solicitation" and exceed the protections of P.L. 86-272, such that CH411 is not protected by P.L. 86-272 in Indiana, Michigan, Wisconsin and other states.
47. The burden of establishing entitlement to a tax exemption, such as the protection afforded by P.L. 86-272, rests with the party seeking to assert it. *City of Chicago v. Illinois Department of Revenue*, 147 Ill.2d 484, 491 (1992).
48. As the party arguing in favor of the application of an exemption from tax, the Department has failed to introduce any evidence and, therefore, meet its burden to show that the states of Indiana, Michigan, Wisconsin and others were prohibited from imposing a net income tax on CH411 under P.L. 86-272.
49. CH411 had nexus in Indiana and filed a separate tax return with the Indiana Department of Revenue and included its Indiana sales in the numerator of its Indiana sales factor for the Period at Issue.

50. CH411 checked the box on the face of each of its Michigan returns confirming that, individually, it has nexus with the State of Michigan, and included its Michigan sales in the numerator of its Michigan sales factor during the Period at Issue.

51. CH411 had nexus with Wisconsin and included its Wisconsin sales in the numerator of its Wisconsin sales factor during the Period at Issue.

52. The Department misapplied Illinois's throwback sales statute by including CH411's out-of-state sales in the numerator of Petitioner's Illinois sales factor. CH411 was subject to tax and, in fact, paid tax on its net income in those other states.

WHEREFORE, Petitioner prays the Tax Tribunal find and enter an order determining that the Department's inclusion of CH411's out-of-state sales in the numerator of its Illinois sales factor is improper and that the Department's assessments, along with any penalties and/or interest, must be abated in their entirety, along with such other and further relief as the Tax Tribunal deems appropriate in this matter.

COUNT II

APPLICATION OF ILLINOIS'S THROWBACK RULE IN THIS CASE VIOLATES THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION AS IT DOES NOT RELATE TO ACTIVITIES PERFORMED IN THE STATE

53. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 52 as if fully set forth herein.

54. A state tax affecting interstate commerce must meet a four-pronged test to survive a Commerce Clause challenge: (1) the tax must be applied to an activity that has a "substantial nexus" with the taxing state; (2) the tax must be "fairly apportioned" to activities carried on by the taxpayer in the taxing state; (3) the tax must not discriminate against interstate commerce; and (4) the tax

must be “fairly related” to services provided by the taxing state. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 277-279, 287 (1977).

55. As applied to CH411’s sales of tangible personal property shipped to customers in Indiana, Michigan, Wisconsin and other states, the Department’s determination that these out-of-state sales must be thrown back to Illinois violates *Complete Auto*’s fair apportionment requirement.
56. In order to meet the fair apportionment prong of *Complete Auto*, the tax must meet both an “internal consistency” and an “external consistency” test. *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 169 (1983). Under the “internal consistency” test, the tax must not result in multiple taxation if every state were to impose the same tax. Under the “external consistency” test, a state is precluded from taxing value attributable to income earned outside of the state. That is, states are precluded from extraterritorial taxation. *Id.* at 175-76. Here, requiring Petitioner to throw back CH411’s sales made to customers in Indiana, Michigan, Wisconsin and other states, where CH411 files net income tax returns, pays net income tax, and includes these sales in the numerators of each state’s respective sales factor, violates both the internal and external consistency tests.
57. If every state were to apply a throwback rule as the Department proposes to do with these assessments despite having adopted a destination-based sourcing rule for sales of tangible personal property, it would result in multiple taxation of the same income in both the origin and destination state. The same sales / receipts would be included in the numerators of both the destination and origin state sales factors, thereby improperly overstating the apportionable income attributable to each state. This violates the internal consistency test under *Container Corp. of Am. v. Franchise Tax Bd.*

58. As applied to the Petitioner in this instance, the throwback rule in Illinois results in the taxation of income earned outside the state of Illinois by including the receipts at issue in the numerator of the Illinois sales factor (origin state) when they were already included in the numerators of each destination state's sales factor. This results in improper extraterritorial taxation in violation of the external consistency test of *Container Corp. of Am. v. Franchise Tax Bd.*

59. Thus, requiring Petitioner to throw back CH411's sales made to customers out of state, where CH411 files net income tax returns, pays net income tax, and includes these sales in the numerators of each state's respective sales factor, violates the Commerce Clause of the U.S. Constitution and is therefore invalid.

WHEREFORE, Petitioner prays the Tax Tribunal find and enter an order determining that the Department's inclusion of CH411's out-of-state sales in the numerator of the Illinois sales factor is improper and violates the Commerce Clause of the U.S. Constitution, and that the Department's assessments, along with any penalties and/or interest, must be abated in their entirety, along with such other and further relief as the Tax Tribunal deems appropriate in this matter.

COUNT III

IITA SECTION 304(a)(3)(B)(ii) VIOLATES THE UNIFORMITY CLAUSE OF THE ILLINOIS CONSTITUTION

60. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 59 as if fully set forth herein.

61. Pursuant to IITA Sections 5/304(a)(3)(B)(ii) and 5/303(f), shipments of tangible personal property that originated in Illinois and which are delivered to a purchaser in another state are considered "in this State" for purposes of computing the numerator of the Illinois sales factor if the taxpayer is not subject to a net income tax in the state of the purchaser.

62. Article IX, Section 2 (the “Uniformity Clause”) of the Illinois Constitution of 1970 states:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

63. In order to survive a challenge under the Uniformity Clause, “a non-property tax classification must (1) be based on a real and substantial difference between the people taxed and those not taxed, and (2) bear some reasonable relationship to the object of the legislation or to public policy.” *Arangold Corp. v. Zehnder*, 204 Ill.2d 142, 153 (2003) (internal citations omitted).

64. The Uniformity Clause “was intended to be a broader limitation on legislative power to classify for non-property tax purposes than the limitation of the equal protection clause.” Furthermore, “[w]hen faced with a good-faith uniformity challenge, the taxing body bears the initial burden of producing a justification for the classification.” *Id.* “A party bringing a uniformity clause challenge need not negate every conceivable basis that might justify the classification.” *Searle Pharmaceuticals, Inc. v. Dep’t of Revenue*, 117 Ill.2d 454, 468 (1987). Therefore, “a good-faith challenge to a tax classification requires the taxing body to justify the classification.” *Primeco Personal Communications, L.P. v. Illinois Commerce Commission*, 196 Ill.2d 70, 85 (2001).

65. Under the Department’s application of IITA Section 304(a)(3)(B)(ii) in this case, an entity that sells tangible personal property but that is not the employer of record of the representatives who maintain a market on its behalf in a particular state is subject to the Illinois throwback rule (here, CH411 according to the Department), while an entity that sells tangible personal property and that is the employer of record of such representatives is not subject to the Illinois throwback rule (here, CH110 according to the Department).

66. Under the Department's application of IITA Section 304(a)(3)(B)(ii) in this case, Petitioner would have a different Illinois sales factor and Illinois apportionment factor based solely on which entity employs the representatives who are maintaining a market for CH411 and CH110 in various states.
67. For example, if CH411 was the employer of record for the PBCs, the Department would have instead "thrown back" CH110's sales originating from an Illinois location, if any, for the Period at Issue, which would have arbitrarily resulted in a different Illinois sales factor and Illinois apportionment factor for Petitioner in direct conflict with the Uniformity Clause of the Illinois Constitution.
68. There is no real and substantial difference between entities that sell tangible personal property and that are the employers of record of representatives who maintain a market on their behalf in a particular state and entities that sell tangible personal property and that are not the employers of record of such representatives.
69. Due to this disparate treatment of otherwise identical entities, the Department has the burden of producing a justification for such disparate treatment.

WHEREFORE, Petitioner prays the Tax Tribunal find and enter an order determining that the Illinois throwback rule in IITA Section 304(a)(3)(B)(ii) is unconstitutional because it violates the Uniformity Clause of the Illinois Constitution of 1970. Therefore, the Department's assessments must be abated, along with any penalties and/or interest, and such other and further relief as the Tax Tribunal deems appropriate in this matter.

COUNT IV

THE DEPARTMENT’S DISALLOWANCE OF PETITIONER’S ILLINOIS ECONOMIC DEVELOPMENT FOR A GROWING ECONOMY (“EDGE”) CREDIT IS IN ERROR

70. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 69 as if fully set forth herein.

71. Petitioner is entitled to claim an EDGE Credit pursuant to 35 ILCS 5/211; Ill. Admin. Code tit. 86, 100.2198.

72. Petitioner maintained a valid EDGE Agreement with the Department of Commerce and Economic Opportunity (DCEO) during the Period at Issue.

73. Petitioner claimed an EDGE Credit during the Period at Issue pursuant to a valid and binding EDGE Agreement with the DCEO.

74. The Department’s disallowance of that Credit is in violation of Illinois law.

WHEREFORE, Petitioner prays the Tax Tribunal find and enter an order determining that the Department’s disallowance of Petitioner’s EDGE Credit violates Illinois law. Therefore, the Department’s assessments must be abated, or at least adjusted, along with any penalties and/or interest, and such other and further relief as the Tax Tribunal deems appropriate in this matter.

COUNT V

IN THE ALTERNATIVE, PETITIONER IS ENTITLED TO AN ALTERNATIVE METHOD OF APPORTIONMENT PURSUANT TO IITA SECTION 304(f)

75. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 74 as if fully set forth herein.

76. In the alternative to the relief sought in Counts I, II, and III Petitioner is entitled, pursuant to IITA Section 304(f), to an alternative method of apportionment of its business income in order to achieve an equitable apportionment thereof.
77. Under Illinois law and the Department's regulations, IITA Section 304(f) provides that "if the allocation and apportionment provisions of subsections (a) through (e) do not fairly represent the extent of a person's business activity in this State, the person may petition for or the Director of Revenue may 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 in this State; or (4) the employment of any other method to effectuate an equitable allocation and apportionment of the person's business income." *See* Ill. Admin. Code tit. 86, § 100.3390(a); *and* 35 ILCS 5/304(f).
78. As described in Count II, improperly apportioning Petitioner's income by including CH411's out-of-state sales in the numerator of the Illinois sales factor under the state's throwback rule does not fairly represent the extent of Petitioner's business activity in the state because it results in multiple taxation of the same income, and extraterritorial taxation of income earned by Petitioner in Indiana, Michigan, Wisconsin and other states.
79. Such a result is distortive and does not fairly represent Petitioner's business activity in Illinois. An alternative methodology providing for exclusion of these out-of-state sales from the numerator of Petitioner's Illinois sales factor would more fairly and equitably reflect Petitioner's business activities in Illinois.

WHEREFORE, Petitioner prays the Tax Tribunal find and enter an order determining that the Department's inclusion of CH411's out-of-state sales in the numerator of its Illinois sales factor does not fairly represent Petitioner's business activity in the state and is therefore invalid. Therefore, the Department's assessments must be abated, or at least adjusted, along with any penalties and/or interest, and such other and further relief as the Tax Tribunal deems appropriate in this matter.

COUNT VI

PENALTIES ASSESSED BY THE DEPARTMENT MUST BE ABATED

80. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 79 as if fully set forth herein.
81. All penalties assessed for the Period at Issue must be abated in full, regardless of the Tax Tribunal's determinations on Counts I through V.
82. Specifically, the Department's Notice and Explanation of Audit Adjustments imposes a UPIA-5 late payment penalty of \$8,573.00 for the tax year ending 2012.
83. Specifically, the Department's Notice and Explanation of Audit Adjustments imposes a UPIA-5 late payment penalty of \$192,355.00 for the tax year ending 2013.
84. The Department's penalty assessments during the Period at Issue must be abated in full for reasonable cause.
85. Under Illinois law, no penalty shall be imposed on a taxpayer if his failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

86. Under Illinois regulations, “the most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability in a timely fashion.” Ill. Admin. Code tit. 86, § 700.400(b).
87. A taxpayer is considered to have made a good faith effort to determine and file and pay his tax liability if “he exercised ordinary business care and prudence in doing so.” Ill. Admin. Code tit. 86, § 700.400(c).
88. The taxpayer’s filing history is also considered in determining whether the taxpayer acted in good faith. Ill. Admin. Code tit. 86, § 700.400(d).
89. Petitioner made a good faith effort to comply with all applicable laws in preparing its 2011, 2012, and 2013 tax returns and timely submitting the tax due and was not reckless, careless or negligent in doing so.
90. Petitioner exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper liability during the Period at Issue in a timely fashion.
91. Petitioner has a history of timely filing corporate income tax in states where it has a taxable nexus and paying its corporate income tax liabilities in a timely manner.
92. Assessment of penalties is not appropriate where the assessment of tax results from reasonable differences of opinion as to the tax liability.
93. Reasonable differences of opinion exist here such that even if assessment of the additional tax at issue here is deemed appropriate, assessment of penalties for the Period at Issue is not.

94. All penalties imposed by the Department during the Period at Issue must be abated for reasonable cause.

WHEREFORE, Petitioner prays the Tax Tribunal enter an order abating the assessed penalty amounts in full and such other relief the Tax Tribunal deems appropriate in this matter.

COUNT VII

INTERCOMPANY EXPENSE ADDBACK IS IMPROPER

95. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 94 as if fully set forth herein.

96. Interest expense paid by CH110 to certain affiliates was improperly added back to CH110's Illinois combined base income.

97. Royalty fees paid by CH110 to certain affiliates was improperly added back to CH110's Illinois combined base income.

98. The IITA requires taxpayers to add back to combined base income certain identified related party expenses. 35 ILCS 5/203(b)(2).

99. This adjustment is required for interest expense and royalty fees paid to related entities that are excluded from the Illinois unitary combined group unless one or more specific exceptions apply. *See* 35 ILCS 5/203(b)(2)(E-12) and (E-13) and Ill. Admin. Code tit. 86, § 100.2340.

100. Interest expenses paid to related parties are fully deductible for purposes of calculating Illinois taxable income if "paid, accrued, or incurred, directly or indirectly, to a person who is subject in a foreign country or state, other than a state which requires mandatory unitary reporting, to a tax

on or measured by net income with respect to such interest ...” 35 ILCS 5/203(b)(2)(E-12)(i).

See also Ill. Admin. Code tit. 86, § 100.2340(c)(1)(A).

101. Royalty fees and expenses paid to related parties are fully deductible for purposes of calculating Illinois taxable income if “paid, accrued, or incurred, directly or indirectly, from a transaction with a person who is subject in a foreign country or state, other than a state which requires mandatory unitary reporting, to a tax on or measured by net income with respect to such item ...” 35 ILCS 5/203(b)(2)(E-13)(i). *See also* Ill. Admin. Code tit. 86, § 100.2340(c)(2)(A).
102. CH110 makes payments of interest and royalties, directly or indirectly, to related parties that are subject to tax in a foreign country or U.S. state based on or measured by net income.
103. Cardinal Health Technologies Switzerland GmBh (“CH Tech Swiss”) is a related affiliate of CH110 and is wholly owned by Cardinal Health Technologies LLC (“CH Tech”), which, in turn, is 99% owned by Epic Insurance Company (“Epic”).
104. CH Tech Swiss, CH Tech, and Epic were properly excluded from CH110’s Illinois unitary combined returns during the Period at Issue.
105. Epic is subject to income tax in Illinois and reports its income to the Department on Form IL-1120, Corporation Income and Replacement Tax Return.
106. CH110 pays annual interest to CH Tech pursuant to an arm’s length intercompany loan agreement.
107. CH110 pays annual royalty fees to CH Tech Swiss pursuant to an arm’s length intercompany royalty agreement.
108. Epic is subject to tax based on or measured by income in Illinois, among other jurisdictions.

109. CH Tech Swiss is subject to tax based on or measured by income in Switzerland, among other jurisdictions.

110. Interest expense paid by CH110 to related parties, including CH Tech, satisfies the subject-to-tax exception to addback provided in 35 ILCS 5/203(b)(2)(E-12)(i) and Ill. Admin. Code tit. 86, § 100.2430(c)(1)(A).

111. Royalty fees paid by CH110 to related parties, including CH Tech Swiss, satisfies the subject-to-tax exception to addback provided in 35 ILCS 5/203(b)(2)(E-13)(i) and Ill. Admin. Code tit. 86, § 100.2430(c)(2)(A).

112. Addback of interest expense paid by CH110 to CH Tech for the Period at Issue is improper.

113. Addback of royalty fees paid by CH110 to CH Tech Swiss for the Period at Issue is improper.

WHEREFORE, Petitioner prays the Tax Tribunal enter an order determining the addback of interest expense and royalty fees to CH110's Illinois combined base income for the Period at Issue is improper and such other relief the Tax Tribunal deems appropriate in this matter.

DATED: January 12, 2023

Respectfully submitted,

Theodore R. Bots
Attorney for Petitioner

Theodore R. Bots (ARDC No. 6224515)
David A. Hemmings (ARDC No. 6307850)
BAKER MCKENZIE LLP
300 E. Randolph, Ste. 5000
Chicago, IL 60601
Telephone: (312) 861-8000
Fax: (312) 698-2004
Theodore.Bots@bakermckenzie.com
Drew.Hemmings@bakermckenzie.com

*Attorneys for Petitioner,
Cardinal Health 110, LLC and Affiliates*

EXHIBIT A



Illinois Department of Revenue
IL-2848 Power of Attorney



Read this information first

Submit your completed form to REV.POA@Illinois.gov. Do not attach to your tax return. You also may be required to provide a copy of this form to a representative of the Illinois Department of Revenue. This power of attorney automatically expires 10 years from the date it is signed. If you do not properly complete this form, you will be required to submit a new Form IL-2848. See the instructions for additional information.
Note: A separate form may need to be completed for each taxpayer. An asterisk (*) below indicates a required field.

Step 1: Complete the following taxpayer information

Cardinal Health 110 LLC & Affiliates		68-0158739
Name of individual or business*		Identification number (i.e., FEIN or SSN)* - All nine digits required.
7000 Cardinal Place		08375-74656
Street address*		Illinois Account ID (if known)
Dublin	OH	43017
City*	State*	ZIP*
		(614) 757-5000
		Daytime phone number*

Step 2: Identify the authorized agent or fiduciary executing this form - Signature required in Step 6

Complete the following if the taxpayer is a corporation, partnership, trust, or estate (i.e., not an individual taxpayer) or if someone other than the taxpayer is authorizing the power of attorney and the taxpayer is an individual. If you are not the taxpayer and you already have been designated by the courts as power of attorney, do not complete this form. Instead complete Form IL-56, Notice of Fiduciary Relationship. See instructions for who can execute this form.

Wayne Robinson		Vice President - Tax
Name*		Title*
7000 Cardinal Place		(614) 757-5000
Street address*		Daytime phone number*
Dublin	OH	43017
City*	State*	ZIP*
		Email address

Step 3: Identify the representative(s) - If more than two representatives, list the total number here: _____

Attach a copy of page one for every two additional representatives. (See instructions.) **Note:** If any representative listed is a person who is not an attorney, a certified public accountant, or an enrolled agent, you must complete the notary section of Step 6.

The taxpayer named above appoints the following representative as attorney-in-fact:

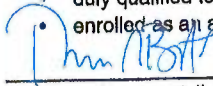
Theodore R. Bots	Roman Patzner
Name of individual*	Name of individual*
Check one: <input checked="" type="checkbox"/> Attorney <input type="checkbox"/> CPA <input type="checkbox"/> Enrolled agent	Check one: <input checked="" type="checkbox"/> Attorney <input type="checkbox"/> CPA <input type="checkbox"/> Enrolled agent
(If applicable)	(If applicable)
Baker & McKenzie LLP	Baker & McKenzie LLP
Name of firm, if applicable	Name of firm, if applicable
6224515	6300525
Identification number (Attorney License No., PTIN, FEIN, or SSN)* - See Instr.	Identification number (Attorney License No., PTIN, FEIN, or SSN)* - See Instr.
300 E. Randolph, Suite 5000	300 E. Randolph, Suite 5000
Street address*	Street address*
Chicago	Chicago
IL	IL
State*	State*
80001	60601
City*	City*
(312) 861-8845	(312) 861-8945
Daytime phone number*	Daytime phone number*
(312) 698-2004	(312) 698-2373
Fax number	Fax number
theodore.bots@bakermckenzie.com	roman.patzner@bakermckenzie.com
Email address	Email address

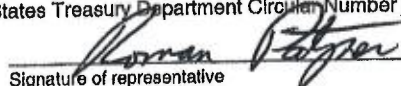
Check this box if you want to authorize the Department to send duplicate copies of notices to the representative listed above.

Check this box if you want to authorize the Department to send duplicate copies of notices to the representative listed above.

Complete the following if a box above is checked to indicate that the representative is an attorney, CPA, or enrolled agent

- I declare that I am not currently under suspension or disbarment and that I am
 - a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
 - duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
 - enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

 5/3/2019
 Signature of representative Date
 Theodore Bots IL
 Print name Jurisdiction (state(s), etc.)

 5/3/2019
 Signature of representative Date
 Roman Patzner IL
 Print name Jurisdiction (state(s), etc.)

Step 4: Revocation of power of attorney appointments

This power of attorney revokes all powers of attorney on file with the Illinois Department of Revenue with respect to the same matters and years or periods covered. If you do not want to revoke prior powers of attorney, check this box:

Step 5: Identify the tax matters and the type of appointment — Designate the Tax Matters to which the power of attorney applies and the Type of Appointment.

Tax Matters

Illinois Corporate Income Tax
Tax Type/Tax Form(s) or Notices*

Tax Periods Ending 6/30/2011-6/30/2013
Tax Year(s) or Filing Period(s)*

Tax Type/Tax Form(s) or Notices

Tax Year(s) or Filing Period(s)

Tax Type/Tax Form(s) or Notices

Tax Year(s) or Filing Period(s)

Type of Appointment — Check either General or Specific Appointment. Do not check both boxes. See Instructions.

General Appointment

The attorneys-in-fact named above shall have, subject to revocation, full power of attorney to perform any act that the principals can and may perform, including the authority to receive and discuss confidential information for the tax matters listed above.

Specific Appointment

The attorneys-in-fact named above shall have, subject to revocation, power of attorney to receive and discuss with the Illinois Department of Revenue confidential information for the tax matters listed above and to perform only those additional acts that the principals can and may perform designated below. (Check the following, as applicable.)

- Yes** Endorse or collect checks in payment of refunds.
- Yes** Receive checks in payment of any refund of Illinois taxes, penalties, or interest.
- Yes** Execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- Yes** Execute consents extending the statutory period for assessments or collection of taxes.
- Yes** Delegate authority or substitute another representative.
- Yes** Execute offers in compromise or settlement of tax liability.
- Yes** Represent the taxpayer before the Illinois Department of Revenue in administrative hearings or the Illinois Independent Tax Tribunal (requiring representation by an attorney).
- Yes** Represent the taxpayer before the Illinois Department of Revenue in proceedings other than administrative hearings, such as proceedings before the Informal Conference Board or the Board of Appeals.
- Yes** Obtain a private letter ruling on behalf of the taxpayer.
- Yes** Other (Please describe.) _____

Step 6: Signature (Required) - This form must be signed by the taxpayer listed in Step 1 or the individual listed in Step 2.

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Wayne Robinson Taxpayer's Signature* Wayne Robinson Print name* Vice President Tax Title, if applicable 5/2/19 Date

Spouse's signature (required if spouse is listed in Step 1) _____ Print name _____ Date _____

Complete the following if any representative listed in Step 3 is a person other than an attorney, a certified public accountant, or an enrolled agent.

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following:

Any person signing as or for the taxpayer

- is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here, **OR**

Signature of witness Date

Signature of witness Date

- appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary Date

Notary seal



EXHIBIT B

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



#BWVKMGV
#CNXX XXX6 2X71 2483#
CARDINAL HEALTH 110 LLC
2353 PROSPECT DR
AURORA IL 60502-9418

March 19, 2019



Letter ID: CNXXXXX62X712483

Taxpayer ID: 68-0158739
Audit ID: A1190838272
Reporting period: June 2011
Total Deficiency: \$2,223,281.31
Balance due: \$2,223,281.31

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. Illinois law requires that we notify you of this deficiency and your rights.

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue", write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed, but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- In all other cases, file a protest with us, the Illinois Department of Revenue, within 60 days of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within 60 days, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- In any case, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due which, may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

David Harris
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 782-8064

REDACTED

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



#BWNKMGV
#CNXX X14X 516X 1443#
CARDINAL HEALTH 110 LLC
2353 PROSPECT DR
AURORA IL 60502-9418

March 19, 2019



Letter ID: CNXXX14X516X1443

Taxpayer ID: 68-0158739
Audit ID: A1190838272
Reporting period: June 2012
Total Deficiency: \$5,713,099.55
Balance due: \$5,713,099.55

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. Illinois law requires that we notify you of this deficiency and your rights.

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue", write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed, but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- In all other cases, file a protest with us, the Illinois Department of Revenue, within 60 days of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within 60 days, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- In any case, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due which, may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

A handwritten signature in black ink, appearing to read "David Harris".

David Harris
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 782-8064

REDACTED

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



#BWNKMGV
#CNXX X133 X41X 3521#
CARDINAL HEALTH 110 LLC
2353 PROSPECT DR
AURORA IL 60502-9418

March 19, 2019



Letter ID: CNXXX133X41X3521

Taxpayer ID: 68-0158739
Audit ID: A748232704
Reporting period: June 2013
Total Deficiency: \$6,610,319.69
Balance due: \$6,610,319.69

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. Illinois law requires that we notify you of this deficiency and your rights.

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue", write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed, but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- In all other cases, file a protest with us, the Illinois Department of Revenue, within 60 days of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within 60 days, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- In any case, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due which, may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

David Harris
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 782-8064

REDACTED

EXHIBIT 2

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

CARDINAL HEALTH, INC AND
AFFILIATES

Petitioner,

vs.

ILLINOIS DEPARTMENT OF REVENUE

Respondent.

Case No. 19 TT 77

FIRST AMENDED PETITION

Cardinal Health, Inc. (“CHI”), together with its affiliates (collectively referred to herein as “Cardinal Health” or “Petitioner”), by and through its attorneys, Baker & McKenzie LLP, who are duly authorized to represent Petitioner in this regard pursuant to the Power of Attorney attached hereto as **Exhibit A**, hereby petitions the Illinois Independent Tax Tribunal to review and reverse the Notices of Deficiency issued by the Illinois Department of Revenue (“Department”) as follows:

PARTIES

1. Petitioner is a multistate business enterprise that engages in business through a number of affiliates.
2. Petitioner maintains its corporate headquarters at 7000 Cardinal Place, Dublin, Ohio, 43017, and its telephone number is 614-757-5000.
3. For purposes of filing an Illinois unitary combined group tax return for the tax year ending 2014 (the “Period at Issue”), Petitioner’s designated agent is CHI. CHI’s federal identification number is 31-0958666.
4. The Department is an agency of the State of Illinois and is responsible for administering and enforcing the revenue laws of the State of Illinois.

JURISDICTION

5. On or about March 19, 2019, the Department issued Notices of Deficiency (“Notices”) to Petitioner assessing corporation income tax, penalties and interest for the Period at Issue, letter ID CNXXXX9724363361. A copy of the Notice is attached hereto as **Exhibit B**.
6. This Tribunal has original jurisdiction over all Department determinations reflected on Notices of Deficiency, among other notices, where the amount at issue exceeds \$15,000, exclusive of penalties and interest. 35 ILCS 1010/1-45.
7. The amount at issue in this matter exceeds \$15,000 exclusive of penalties and interest such that this Tribunal has original jurisdiction over the matter.

BACKGROUND

8. Petitioner is a worldwide business enterprise engaged in the marketing, sale and distribution of pharmaceutical and medical products to hospitals, clinics, government agencies and retail pharmacies nationwide.
9. Cardinal Health 110, LLC (“CH110”) is an affiliate of CHI and is included in Petitioner’s Illinois unitary group for tax purposes for the Period at Issue.
10. Cardinal Health 411, Inc. (“CH411”) is an affiliate of CHI and is included in Petitioner’s Illinois unitary group for tax purposes for the Period at Issue.
11. CH110 and CH411 have employees in numerous states, and both are primarily engaged in the wholesale distribution of pharmaceutical products to and the performance of various pharmacy management services for its customers nationwide as part of Petitioner’s multistate business enterprise.

12. In states where it has no employees, CH411 relies on affiliates to perform various functions on its behalf for purposes of maintaining a market for its products in those states and furthering business relationships with its customers.
13. One such affiliate working on behalf of CH411 is CH110.
14. CH110 employs Pharmacy Business Consultants (“PBCs”), who make in-person visits to CH411 customers in states nationwide, including, but not limited to, Indiana, Michigan, and Wisconsin.
15. PBCs keep detailed records of their sales, services, and other activities performed on behalf of CH411’s customers including providing technical assistance, addressing customer complaints / issues, collecting on accounts, and setting up and training customers on how to operate the inventory management program to purchase products from CH411 and other Cardinal Health affiliates.
16. The services provided by PBCs are integral in generating CH411’s customer base and business activities in Indiana, Michigan, and Wisconsin and are essential to maintaining its market in these states and others.
17. Based on the physical presence of the employees of its affiliates including, but not limited to, PBCs who maintain customer relationships and perform services and other activities on behalf of CH411 in each state, CH411 files and pays tax on its income on either a separate return, or as part of a unitary combined group return in Indiana, Michigan, and Wisconsin, among other states.
18. Based on the physical presence of the employees of its affiliates including, but not limited to, PBCs who maintain customer relationships and perform services and other activities on behalf of CH411 in each state, CH411’s sales / receipts are included in the numerators of the sales factor

reported on either a separate return, or the unitary combined group return, in the states of Indiana, Michigan and Wisconsin, among others.

19. CH411 sold pharmaceutical products to customers located in Indiana, Michigan, and Wisconsin, among others, well in excess of \$100,000 in each state during the Period at Issue.
20. CH411 engaged in thousands of transactions with customers located in Indiana, Michigan, Wisconsin and other states during the Period at Issue.
21. Based on the activities performed on its behalf in Indiana, Michigan, Wisconsin, and other states, CH411 files and pays tax on its income on either a separate return, or as part of a unitary combined group return in Indiana, Michigan, and Wisconsin, among other states.
22. The Department audited Petitioner's Illinois corporation income tax returns for its tax year ending 2014.
23. Based on its audit, the Department adjusted Petitioner's income apportioned to Illinois by improperly including certain receipts of CH411 in the numerator of Petitioner's Illinois sales factor (i.e., these sales were "thrown back" or "reverted" to Illinois). Specifically, the Department included approximately \$3.5 billion in additional receipts in the numerator of Petitioner's Illinois sales factor for the tax year ending 2014.
24. The "thrown back" sales at issue were shipped from CH411's distribution center in Aurora, Illinois, to purchasers located almost entirely in the states of Indiana, Michigan, and Wisconsin. A relatively small amount of sales were also shipped to purchasers located in Florida, Georgia, Iowa, Kentucky, Massachusetts, Missouri, Mississippi, North Carolina, New Jersey, Pennsylvania, and Tennessee.

25. The Department's position is that these sales originating from Petitioner's distribution center and shipped to out-of-state purchasers are "Illinois sales" and must be thrown back to Illinois because Petitioner is not "subject to tax" in Indiana, Michigan, Wisconsin and other states.

COUNT I

CH411 IS SUBJECT TO TAX AND, IN FACT, PAID TAX ON OUT-OF-STATE SALES TO CUSTOMERS IN INDIANA, MICHIGAN, WISCONSIN AND OTHER STATES

26. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 25 as if fully set forth herein.

27. In the Notices, the Department overstates Petitioner's income apportionable to Illinois by improperly "throwing back" CH411's sales made to customers in Indiana, Michigan, Wisconsin and other states for purposes of computing Petitioner's Illinois sales factor.

28. CH411 was subject to a net income tax in Indiana, Michigan, Wisconsin and other states during the Period at Issue.

29. CH411 filed a separate corporate net income tax return and paid tax in Indiana during the Period at Issue.

30. CH411 filed a corporate net income tax return and paid tax as part of Petitioner's unitary combined group in Michigan for the Period at Issue.

31. CH411 filed a corporate net income tax return and paid tax as part of Petitioner's unitary combined group in Wisconsin for the Period at Issue.

32. CH411 included its sales to Indiana customers in the numerator of its Indiana sales factor reported on its Indiana corporate tax return for the Period at Issue (e.g., approximately \$1.7 billion for the tax year ending 2014).

33. CH411 included its sales to Michigan customers in the numerator of Petitioner’s Michigan sales factor reported on Petitioner’s Michigan corporate tax return for the Period at Issue (e.g., approximately \$1 billion for the tax year ending 2014).
34. CH411 included its sales to Wisconsin customers in the numerator of Petitioner’s Wisconsin sales factor reported on Petitioner’s Wisconsin corporate tax return for the Period at Issue (e.g., approximately \$500 million for the tax year ending 2014).
35. Under Illinois’s throwback statute for purposes of computing the Illinois sales factor, “[s]ales of tangible personal property are in this state if . . . The property is shipped from an office, store, warehouse, factory or other place of storage in this State and . . . the person is not taxable in the state of the purchaser” 35 ILCS 5/304(a)(3)(B)(ii).
36. Illinois authority provides that a taxpayer is taxable in another state, and its sales may not be thrown back to Illinois, if “(1) In that state he is subject to a net income tax . . . or (2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.” 35 ILCS 5/303(f); Ill. Admin. Code tit. 86 § 100.3200(1).
37. Department regulations further provide that “[a] taxpayer claiming to be taxable in another state . . . must establish not only under the laws of that state he or she is subject to one of the specified taxes [e.g. corporate net income tax], but that he or she, in fact, pays the tax.” Ill. Admin. Code tit. 86 § 100.3200(2).
38. Based on the activities of PBCs, CH411 has physical presence in the states of Indiana, Michigan, and Wisconsin, among others.
39. PBCs acting on behalf of CH411 perform various in-person activities dedicated to maintaining CH411’s market in Indiana, Michigan, Wisconsin and other states.

40. Under Illinois law, CH411 is subject to tax in Indiana, Michigan, Wisconsin and other states, because it has a physical presence there by virtue of PBCs acting on its behalf in those states. *See e.g.*, Ill. Admin. Code tit. 86, § 100.9720(c)(4) (providing a non-exhaustive list of activities that will render a taxpayer “subject to tax,” including “collecting current or delinquent accounts . . . installation or supervision of installation after shipment or delivery . . . conducting training . . . providing any kind of technical assistance[,]” among others).
41. Under Indiana law, CH411 is subject to tax in Indiana because it has a physical presence there by virtue of PBCs acting on its behalf in those states. *See e.g.* Ind. Code § 6-3-2-2(a)(2); Ind. Admin. Code 3.1-1-38(4).
42. Under Michigan law, CH411 is subject to tax in Michigan because it has a physical presence there by virtue of PBCs acting on its behalf in those states. Mich. Comp. Laws Ann. § 206.621(1)(b).
43. Under Wisconsin law, CH411 is subject to tax in Wisconsin because it has a physical presence there by virtue of PBCs acting on its behalf in those states. Wis. Admin. Code Tax 2.82(4).
44. PBCs provide several of the services that make a taxpayer “subject to tax” under Section 100.9720(c)(4), including, but not limited to, providing technical assistance, addressing customer complaints / issues, collecting on accounts, and setting up and training customers on how to operate the inventory management program to purchase products from CH411.
45. The Department has argued in other cases that Illinois follows an economic nexus standard. *See e.g., Capital One Fin. Corp v. Illinois Department of Revenue*, No. CSP048, 2015 BL 396584 (Ill. Cir. Ct. May 11, 2015).

46. If an economic nexus standard applies in Illinois for corporate net income tax purposes, CH411's sales in Indiana, Michigan, and Wisconsin exceed constitutional thresholds for economic nexus in Indiana, Michigan, Wisconsin and other states. *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018).
47. The activities of PBCs are more substantial than "mere solicitation" and exceed the protections of P.L. 86-272, such that CH411 is not protected by P.L. 86-272 in Indiana, Michigan, Wisconsin and other states.
48. The burden of establishing entitlement to a tax exemption, such as the protection afforded by P.L. 86-272, rests with the party seeking to assert it. *City of Chicago v. Illinois Department of Revenue*, 147 Ill.2d 484, 491 (1992).
49. As the party arguing in favor of the application of an exemption from tax, the Department has failed to introduce any evidence and, therefore, meet its burden to show that the states of Indiana, Michigan, Wisconsin and others were prohibited from imposing a net income tax on CH411 under P.L. 86-272.
50. CH411 had nexus in Indiana and filed a separate tax return with the Indiana Department of Revenue and included its Indiana sales in the numerator of its Indiana sales factor for the Period at Issue.
51. CH411 checked the box on the face of its Michigan return confirming that, individually, it has nexus with the State of Michigan, and included its Michigan sales in the numerator of its Michigan sales factor during the Period at Issue.
52. CH411 had nexus with Wisconsin and included its Wisconsin sales in the numerator of its Wisconsin sales factor during the Period at Issue.

53. The Department misapplied Illinois's throwback sales statute by including CH411's out-of-state sales in the numerator of Petitioner's Illinois sales factor. CH411 was subject to tax and, in fact, paid tax on its net income in those other states.

WHEREFORE, Petitioner prays the Tax Tribunal find and enter an order determining that the Department's inclusion of CH411's out-of-state sales in the numerator of its Illinois sales factor is improper and that the Department's assessments, along with any penalties and/or interest, must be abated in their entirety, along with such other and further relief as the Tax Tribunal deems appropriate in this matter.

COUNT II

APPLICATION OF ILLINOIS'S THROWBACK RULE IN THIS CASE VIOLATES THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION AS IT DOES NOT RELATE TO ACTIVITIES PERFORMED IN THE STATE

54. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 53 as if fully set forth herein.

55. A state tax affecting interstate commerce must meet a four-pronged test to survive a Commerce Clause challenge: (1) the tax must be applied to an activity that has a "substantial nexus" with the taxing state; (2) the tax must be "fairly apportioned" to activities carried on by the taxpayer in the taxing state; (3) the tax must not discriminate against interstate commerce; and (4) the tax must be "fairly related" to services provided by the taxing state. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 277-279, 287 (1977).

56. As applied to CH411's sales of tangible personal property shipped to customers in Indiana, Michigan, Wisconsin and other states, the Department's determination that these out-of-state sales must be thrown back to Illinois violates *Complete Auto's* fair apportionment requirement.

57. In order to meet the fair apportionment prong of *Complete Auto*, the tax must meet both an “internal consistency” and an “external consistency” test. *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 169 (1983). Under the “internal consistency” test, the tax must not result in multiple taxation if every state were to impose the same tax. Under the “external consistency” test, a state is precluded from taxing value attributable to income earned outside of the state. That is, states are precluded from extraterritorial taxation. *Id.* at 175-76. Here, requiring Petitioner to throw back CH411’s sales made to customers in Indiana, Michigan, Wisconsin and other states, where CH411 files net income tax returns, pays net income tax, and includes these sales in the numerators of each state’s respective sales factor, violates both the internal and external consistency tests.
58. If every state were to apply a throwback rule as the Department proposes to do with these assessments despite having adopted a destination-based sourcing rule for sales of tangible personal property, it would result in multiple taxation of the same income in both the origin and destination state. The same sales / receipts would be included in the numerators of both the destination and origin state sales factors, thereby improperly overstating the apportionable income attributable to each state. This violates the internal consistency test under *Container Corp. of Am. v. Franchise Tax Bd.*
59. As applied to the Petitioner in this instance, the throwback rule in Illinois results in the taxation of income earned outside the state of Illinois by including the receipts at issue in the numerator of the Illinois sales factor (origin state) when they were already included in the numerators of each destination state sales factor. This results in improper extraterritorial taxation in violation of the external consistency test of *Container Corp. of Am. v. Franchise Tax Bd.*

60. Thus, requiring Petitioner to throw back CH411's sales made to customers out of state, where CH411 files net income tax returns, pays net income tax, and includes these sales in the numerators of each state's respective sales factor, violates the Commerce Clause of the U.S. Constitution and is therefore invalid.

WHEREFORE, Petitioner prays the Tax Tribunal find and enter an order determining that the Department's inclusion of CH411's out-of-state sales in the numerator of the Illinois sales factor is improper and violates the Commerce Clause of the U.S. Constitution, and that the Department's assessments, along with any penalties and/or interest, must be abated in their entirety, along with such other and further relief as the Tax Tribunal deems appropriate in this matter.

COUNT III

IITA SECTION 304(a)(3)(B)(ii) VIOLATES THE UNIFORMITY CLAUSE OF THE ILLINOIS CONSTITUTION

61. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 60 as if fully set forth herein.

62. Pursuant to IITA Sections 5/304(a)(3)(B)(ii) and 5/303(f), shipments of tangible personal property that originated in Illinois and which are delivered to a purchaser in another state are considered "in this State" for purposes of computing the numerator of the Illinois sales factor if the taxpayer is not subject to a net income tax in the state of the purchaser.

63. Article IX, Section 2 (the "Uniformity Clause") of the Illinois Constitution of 1970 states:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

64. In order to survive a challenge under the Uniformity Clause, "a non-property tax classification must (1) be based on a real and substantial difference between the people taxed and those not

taxed, and (2) bear some reasonable relationship to the object of the legislation or to public policy.” *Arangold Corp. v. Zehnder*, 204 Ill.2d 142, 153 (2003) (internal citations omitted).

65. The Uniformity Clause “was intended to be a broader limitation on legislative power to classify for non-property tax purposes than the limitation of the equal protection clause.” Furthermore, “[w]hen faced with a good-faith uniformity challenge, the taxing body bears the initial burden of producing a justification for the classification.” *Id.* “A party bringing a uniformity clause challenge need not negate every conceivable basis that might justify the classification.” *Searle Pharmaceuticals, Inc. v. Dep’t of Revenue*, 117 Ill.2d 454, 468 (1987). Therefore, a “a good-faith challenge to a tax classification requires the taxing body to justify the classification.” *Primeco Personal Communications L.P. v. Illinois Commerce Commission*, 196 Ill.2d 70, 85 (2001).
66. Under the Department’s application of IITA Section 304(a)(3)(B)(ii) in this case, an entity that sells tangible personal property but that is not the employer of record of the representatives who maintain a market on its behalf in a particular state is subject to the Illinois throwback rule (here, CH411 according to the Department), while an entity that sells tangible personal property and that is the employer of record of such representatives is not subject to the Illinois throwback rule (here, CH110 according to the Department).
67. Under the Department’s application of IITA Section 304(a)(3)(B)(ii) in this case, Petitioner would have a different Illinois sales factor and Illinois apportionment factor based solely on which entity employs the representatives who are maintaining a market for CH411 and CH110 in various states.
68. For example, if CH411 was the employer of record for the PBCs, the Department would have instead “thrown back” CH110’s sales originating from an Illinois location, if any, for the Period

at Issue, which would have arbitrarily resulted in a different Illinois sales factor and Illinois apportionment factor for Petitioner in direct conflict with the Uniformity Clause of the Illinois Constitution.

69. There is no real and substantial difference between entities that sell tangible personal property and that are the employers of record of representatives who maintain a market on their behalf in a particular state and entities that sell tangible personal property and that are not the employers of record of such representatives.

70. Due to this disparate treatment of otherwise identical entities, the Department has the burden of producing a justification for such disparate treatment.

WHEREFORE, Petitioner prays the Tax Tribunal find and enter an order determining that the Illinois throwback rule in IITA Section 304(a)(3)(B)(ii) is unconstitutional because it violates the Uniformity Clause of the Illinois Constitution of 1970. Therefore, the Department's assessments must be abated, along with any penalties and/or interest, and such other and further relief as the Tax Tribunal deems appropriate in this matter.

COUNT IV

IN THE ALTERNATIVE, PETITIONER IS ENTITLED TO AN ALTERNATIVE METHOD OF APPORTIONMENT PURSUANT TO IITA SECTION 304(f)

71. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 70 as if fully set forth herein.

72. In the alternative to the relief sought in Counts I, II, and III Petitioner is entitled, pursuant to IITA Section 304(f), to an alternative method of apportionment of its business income in order to achieve an equitable apportionment thereof.

73. Under Illinois law and the Department's regulations, IITA Section 304(f) provides that "if the allocation and apportionment provisions of subsections (a) through (e) do not fairly represent the extent of a person's business activity in this State, the person may petition for or the Director of Revenue may 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 in this State; or (4) the employment of any other method to effectuate an equitable allocation and apportionment of the person's business income." *See* Ill. Admin. Code tit. 86, § 100.3390(a); *and* 35 ILCS 5/304(f).

74. As described in Count II, improperly apportioning Petitioner's income by including CH411's out-of-state sales in the numerator of the Illinois sales factor under the state's throwback rule does not fairly represent the extent of Petitioner's business activity in the state because it results in multiple taxation of the same income, and extraterritorial taxation of income earned by Petitioner in Indiana, Michigan, Wisconsin and other states.

75. Such a result is distortive and does not fairly represent Petitioner's business activity in Illinois. An alternative methodology providing for exclusion of these out-of-state sales from the numerator of Petitioner's Illinois sales factor would more fairly and equitably reflect Petitioner's business activities in Illinois.

WHEREFORE, Petitioner prays the Tax Tribunal find and enter an order determining that the Department's inclusion of CH411's out-of-state sales in the numerator of its Illinois sales factor does not fairly represent Petitioner's business activity in the state and is therefore invalid. Therefore, the Department's assessments must be abated, or at least adjusted, along with any penalties and/or interest, and such other and further relief as the Tax Tribunal deems appropriate in this matter.

COUNT V

PENALTIES ASSESSED BY THE DEPARTMENT MUST BE ABATED

76. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 75 as if fully set forth herein.
77. All penalties assessed for the Period at Issue must be abated in full, regardless of the Tax Tribunal's determinations on Counts I through V.
78. Specifically, the Department's Notice and Explanation of Audit Adjustments imposes a UPIA-5 late payment penalty of \$384,835.00 for the tax year ending 2014.
79. The Department's penalty assessments during the Period at Issue must be abated in full for reasonable cause.
80. Under Illinois law, no penalty shall be imposed on a taxpayer if his failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.
81. Under Illinois regulations, "the most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability in a timely fashion." Ill. Admin. Code tit. 86, § 700.400(b).
82. A taxpayer is considered to have made a good faith effort to determine and file and pay his tax liability if "he exercised ordinary business care and prudence in doing so." Ill. Admin. Code tit. 86, § 700.400(c).
83. The taxpayer's filing history is also considered in determining whether the taxpayer acted in good faith. Ill. Admin. Code tit. 86, § 700.400(d).

84. Petitioner made a good faith effort to comply with all applicable laws in preparing its 2014 tax return and timely submitting the tax due and was not reckless, careless or negligent in doing so.
85. Petitioner exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper liability during the Period at Issue in a timely fashion.
86. Petitioner has a history of timely filing corporate income tax in states where it has a taxable nexus and paying its corporate income tax liabilities in a timely manner.
87. Assessment of penalties is not appropriate where the assessment of tax results from reasonable differences of opinion as to the tax liability.
88. Reasonable differences of opinion exist here such that even if assessment of the additional tax at issue here is deemed appropriate, assessment of penalties for the Period at Issue is not.
89. All penalties imposed by the Department during the Period at Issue must be abated for reasonable cause.

WHEREFORE, Petitioner prays the Tax Tribunal enter an order abating the assessed penalty amounts in full and such other relief the Tax Tribunal deems appropriate in this matter.

COUNT VI

INTERCOMPANY EXPENSE ADDBACK IS IMPROPER

90. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 89 as if fully set forth herein.
91. Interest expense paid by CH110 to certain affiliates was improperly added back to CH110's Illinois combined base income.

92. Royalty fees paid by CH110 to certain affiliates was improperly added back to CH110's Illinois combined base income.
93. The IITA requires taxpayers to add back to combined base income certain identified related party expenses. 35 ILCS 5/203(b)(2).
94. This adjustment is required for interest expense and royalty fees paid to related entities that are excluded from the Illinois unitary combined group unless one or more specific exceptions apply. *See* 35 ILCS 5/203(b)(2)(E-12) and (E-13) and Ill. Admin. Code tit. 86, § 100.2340.
95. Interest expenses paid to related parties are fully deductible for purposes of calculating Illinois taxable income if "paid, accrued, or incurred, directly or indirectly, to a person who is subject in a foreign country or state, other than a state which requires mandatory unitary reporting, to a tax on or measured by net income with respect to such interest ..." 35 ILCS 5/203(b)(2)(E-12)(i). *See also* Ill. Admin. Code tit. 86, § 100.2340(c)(1)(A).
96. Royalty fees and expenses paid to related parties are fully deductible for purposes of calculating Illinois taxable income if "paid, accrued, or incurred, directly or indirectly, from a transaction with a person who is subject in a foreign country or state, other than a state which requires mandatory unitary reporting, to a tax on or measured by net income with respect to such item ..." 35 ILCS 5/203(b)(2)(E-13)(i). *See also* Ill. Admin. Code tit. 86, § 100.2340(c)(2)(A).
97. CH110 makes payments of interest and royalties, directly or indirectly, to related parties that are subject to tax in a foreign country or U.S. state based on or measured by net income.
98. Cardinal Health Technologies Switzerland GmbH ("CH Tech Swiss") is a related affiliate of CH110 and is wholly owned by Cardinal Health Technologies LLC ("CH Tech"), which, in turn, is 99% owned by Epic Insurance Company ("Epic").

99. CH Tech Swiss, CH Tech, and Epic were properly excluded from CH110's Illinois unitary combined returns during the Period at Issue.
100. Epic is subject to income tax in Illinois and reports its income to the Department on Form IL-1120, Corporation Income and Replacement Tax Return.
101. CH110 pays annual interest to CH Tech pursuant to an arm's length intercompany loan agreement.
102. CH110 pays annual royalty fees to CH Tech Swiss pursuant to an arm's length intercompany royalty agreement.
103. Epic is subject to tax based on or measured by income in Illinois, among other jurisdictions.
104. CH Tech Swiss is subject to tax based on or measured by income in Switzerland, among other jurisdictions.
105. Interest expense paid by CH110 to related parties, including CH Tech, satisfies the subject-to-tax exception to addback provided in 35 ILCS 5/203(b)(2)(E-12)(i) and Ill. Admin. Code tit. 86, § 100.2430(c)(1)(A).
106. Royalty fees paid by CH110 to related parties, including CH Tech Swiss, satisfies the subject-to-tax exception to addback provided in 35 ILCS 5/203(b)(2)(E-13)(i) and Ill. Admin. Code tit. 86, § 100.2430(c)(2)(A).
107. Addback of interest expense paid by CH110 to CH Tech for the Period at Issue is improper.
108. Addback of royalty fees paid by CH110 to CH Tech Swiss for the Period at Issue is improper.

WHEREFORE, Petitioner prays the Tax Tribunal enter an order determining the addback of interest expense and royalty fees to CH110's Illinois combined base income for the Period at Issue is improper and such other relief the Tax Tribunal deems appropriate in this matter.

DATED: January 12, 2023

Respectfully submitted,

Theodore R. Bots
Attorney for Petitioner

Theodore R. Bots (ARDC No. 6224515)
David A. Hemmings (ARDC No. 6307850)
BAKER MCKENZIE LLP
300 E. Randolph, Ste. 5000
Chicago, IL 60601
Telephone: (312) 861-8000
Fax: (312) 698-2004
Theodore.Bots@bakermckenzie.com
Drew.Hemmings@bakermckenzie.com

*Attorneys for Petitioner,
Cardinal Health, Inc. and Affiliates*

EXHIBIT A



Illinois Department of Revenue
IL-2848 Power of Attorney



Read this information first

Submit your completed form to REV.POA@Illinois.gov. Do not attach to your tax return. You also may be required to provide a copy of this form to a representative of the Illinois Department of Revenue. This power of attorney automatically expires 10 years from the date it is signed. If you do not properly complete this form, you will be required to submit a new Form IL-2848. See the instructions for additional information. **Note:** A separate form may need to be completed for each taxpayer. An asterisk (*) below indicates a required field.

Step 1: Complete the following taxpayer information

Cardinal Health Inc. & Affiliates		31-0958666
Name of individual or business*		Identification number (i.e., FEIN or SSN)* - All nine digits required.
7000 Cardinal Place		17750-39392
Street address*		Illinois Account ID (if known)
Dublin	OH 43017	(614) 757-5000
City*	State* ZIP*	Daytime phone number*

Step 2: Identify the authorized agent or fiduciary executing this form - Signature required in Step 6

Complete the following if the taxpayer is a corporation, partnership, trust, or estate (i.e., not an individual taxpayer) or if someone other than the taxpayer is authorizing the power of attorney and the taxpayer is an individual. If you are not the taxpayer and you already have been designated by the courts as power of attorney, do not complete this form. Instead complete Form IL-56, Notice of Fiduciary Relationship. See instructions for who can execute this form.

Wayne Robinson		Vice President - Tax
Name*		Title*
7000 Cardinal Place		(614) 757-5000
Street address*		Daytime phone number*
Dublin	OH 43017	
City*	State* ZIP*	Email address

Step 3: Identify the representative(s) - If more than two representatives, list the total number here: _____

Attach a copy of page one for every two additional representatives. (See Instructions.) **Note:** If any representative listed is a person who is not an attorney, a certified public accountant, or an enrolled agent, you must complete the notary section of Step 6.

The taxpayer named above appoints the following representative as attorney-in-fact:

Theodore R. Bots

Name of individual*

Check one: Attorney CPA Enrolled agent
(if applicable)

Baker & McKenzie LLP

Name of firm, if applicable

6224515

Identification number (Attorney License No., PTIN, FEIN, or SSN)* - See instr.

300 E. Randolph, Suite 5000

Street address*

Chicago IL 60601

City* State* ZIP*

(312) 861-8845 (312) 698-2004

Daytime phone number* Fax number

theodore.bots@bakermckenzie.com

Email address

Roman Patzner

Name of individual*

Check one: Attorney CPA Enrolled agent
(if applicable)

Baker & McKenzie LLP

Name of firm, if applicable

6300525

Identification number (Attorney License No., PTIN, FEIN, or SSN)* - See instr.

300 E. Randolph, Suite 5000

Street address*

Chicago IL 60601

City* State* ZIP*

(312) 861-8945 (312) 698-2373

Daytime phone number* Fax number

roman.patzner@bakermckenzie.com

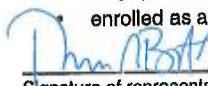
Email address

Check this box if you want to authorize the Department to send duplicate copies of notices to the representative listed above.

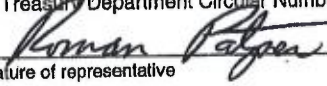
Check this box if you want to authorize the Department to send duplicate copies of notices to the representative listed above.

Complete the following if a box above is checked to indicate that the representative is an attorney, CPA, or enrolled agent

- I declare that I am not currently under suspension or disbarment and that I am
- a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
 - duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
 - enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

 5/3/2019
Signature of representative Date

Theodore Bots IL
Print name Jurisdiction (state(s), etc.)

 5/3/2019
Signature of representative Date

Roman Patzner IL
Print name Jurisdiction (state(s), etc.)

Step 4: Revocation of power of attorney appointments

This power of attorney revokes all powers of attorney on file with the Illinois Department of Revenue with respect to the same matters and years or periods covered. If you do not want to revoke prior powers of attorney, check this box:

Step 5: Identify the tax matters and the type of appointment — Designate the Tax Matters to which the power of attorney applies and the Type of Appointment.

Tax Matters

Illinois Corporate Income Tax
Tax Type/Tax Form(s) or Notices*

Tax Period Ending 6/30/2014
Tax Year(s) or Filing Period(s)*

Tax Type/Tax Form(s) or Notices

Tax Year(s) or Filing Period(s)

Tax Type/Tax Form(s) or Notices

Tax Year(s) or Filing Period(s)

Type of Appointment — Check either General or Specific Appointment. Do not check both boxes. See Instructions.

General Appointment

The attorneys-in-fact named above shall have, subject to revocation, full power of attorney to perform any act that the principals can and may perform, including the authority to receive and discuss confidential information for the tax matters listed above.

Specific Appointment

The attorneys-in-fact named above shall have, subject to revocation, power of attorney to receive and discuss with the Illinois Department of Revenue confidential information for the tax matters listed above and to perform only those additional acts that the principals can and may perform designated below. (Check the following, as applicable.)

- Yes Endorse or collect checks in payment of refunds.
- Yes Receive checks in payment of any refund of Illinois taxes, penalties, or interest.
- Yes Execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- Yes Execute consents extending the statutory period for assessments or collection of taxes.
- Yes Delegate authority or substitute another representative.
- Yes Execute offers in compromise or settlement of tax liability.
- Yes Represent the taxpayer before the Illinois Department of Revenue in administrative hearings or the Illinois Independent Tax Tribunal (requiring representation by an attorney).
- Yes Represent the taxpayer before the Illinois Department of Revenue in proceedings other than administrative hearings, such as proceedings before the Informal Conference Board or the Board of Appeals.
- Yes Obtain a private letter ruling on behalf of the taxpayer.
- Yes Other (Please describe.) _____

Step 6: Signature (Required) - This form must be signed by the taxpayer listed in Step 1 or the individual listed in Step 2.

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Taxpayer's Signature: Wayne Robinson Print name* Vice President, Tax Title, if applicable 5/2/19 Date*

Spouse's signature (required if spouse is listed in Step 1) _____ Print name _____ Date _____

Complete the following if any representative listed in Step 3 is a person other than an attorney, a certified public accountant, or an enrolled agent.

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following:

Any person signing as or for the taxpayer

- is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here, OR

Signature of witness _____ Date _____

Signature of witness _____ Date _____

- appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary _____ Date _____

Notary seal



EXHIBIT B

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return

28,451



March 19, 2019



Letter ID: CNXXXX9724363361

Taxpayer ID: 31-0958666
Audit ID: A580035072
Reporting period: June 2014
Total Deficiency: \$8,601,727.30
Balance due: \$8,601,727.30

#BWNKMGV
#CNXX XX97 2436 3361#
CARDINAL HEALTH INC
7000 CARDINAL PL
DUBLIN OH 43017-1091

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue", write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed, but the total penalties and interest is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases**, file a protest with us, the Illinois Department of Revenue, within **60 days** of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due which, may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

David Harris
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 782-8064

REDACTED

CERTIFICATE OF SERVICE

The undersigned counsel of record certifies that a copy of the **PETITIONER’S UNOPPOSED MOTION FOR LEAVE TO FILE FIRST AMENDED PETITIONS**

INSTANTER was served on January 12, 2023 to the following persons:

Judge Brian F. Barov Administrative Law Judge Illinois Independent Tax Tribunal 160 N. LaSalle Street, Room N506 Chicago, IL 60601 Brian.Barov@illinois.gov	Alan V. Lindquist Illinois Department of Revenue Special Assistant Attorney General 555 West Monroe Street, Ste. 1100 Chicago, IL 60661 Alan.Lindquist@illinois.gov
Joseph T. Kasiak Illinois Department of Revenue 555 West Monroe Street, Ste. 1100 Chicago, IL 60661 Joeseph.Kasiak@illinois.gov	

/s/ Theodore R. Bots _____
Attorney for Petitioner,
Cardinal Health, Inc. and Affiliates