RECEIVED
Nov 25 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2024-000013
Administrative Law Court Case No. 19-ALJ-17-0416-CC

Tractor Supply Company, Appellant,

v.

South Carolina Department of Revenue, Respondent.

RECORD ON APPEAL
VOLUME V

NELSON MULLINS RILEY & SCARBOROUGH, LLP
C. Mitchell Brown
Bryson M. Geer
John C. von Lehe, Jr.
Robert T. Streisel
151 Meeting Street, Suite 600
Charleston, SC 29401-2239
Telephone: (843) 853-5200
mitch.brown@nelsonmullins.com
bryson.geer@nelsonmullins.com
john.vonlehe@nelsonmullins.com
bobby.streisel@nelsonmullins.com

Counsel for Appellant Tractor Supply Company

SOUTH CAROLINA DEPARTMENT OF REVENUE
Marcus D. Antley
W. Allen Myrick
Jason P. Luther
300A Outlet Pointe Blvd.
Columbia, SC 29210
(843) 898-5623
marcus.antley@dor.sc.gov
allen.myrick@dor.sc.gov
jason.luther@dor.sc.gov
courtorders@dor.sc.gov

Counsel for Respondent South Carolina Department of Revenue

TABLE OF CONTENTS

VOLUME I

ORDERS

Final Order dated August 8, 2023 1

Order Rescinding Final Order dated August 21, 2023 65

Amended Final Order dated December 4, 2023 66

Order on Motion for Reconsideration dated December 4, 2023 138

Order Denying Second Motion for Reconsideration dated January 3, 2024 146

PLEADINGS

Tractor Supply Company's ("TSC") Request for Contested Case Hearing 154

TSC's Pre-Hearing Statement 181

South Carolina Department of Revenue's ("Department") Pre-Hearing Statement 189

TSC's Amended Pre-Hearing Statement 197

Department's Amended Pre-Hearing Statement 208

PRE-TRIAL MOTIONS

TSC's Motion in Limine to Limit Testimony of David DeRamus dated January 6, 2023 216

TSC's Motion in Limine to Exclude Economic Substance or Other Similar Claim and Certain Expert Testimony Regarding the Same dated January 6, 2023 337

Department's Response to Petitioner's Motion in Limine to Limit Testimony of David DeRamus dated January 17, 2023 355

Department's Response to Petitioner's Motion in Limine to Exclude Economic Substance or Other Similar Claim and Certain Expert Testimony Regarding the Same dated January 17, 2023 379

TRANSCRIPTS

Hearing Transcript dated January 23-27, 2023 391

VOLUME II

Testimony of Marjorie McKeown
Direct Examination by Ms. Wooten, Counsel for Department 437
Cross Examination by Ms. Geer, Counsel for TSC 525
Redirect Examination by Ms. Wooten, Counsel for Department 529
Recross Examination by Ms. Geer, Counsel for TSC 530
Further Redirect Examination by Ms. Wooten, Counsel for Department 532

Testimony of Orville Sharpe
Direct Examination by Mr. Luther, Counsel for Department 552
Cross Examination by Ms. Geer, Counsel for TSC 575

Testimony of Steven Riggs
Direct Examination by Ms. Wooten, Counsel for Department 603
Cross Examination by Ms. Geer, Counsel for TSC 677
Redirect Examination by Ms. Wooten, Counsel for Department 713

Testimony of Akash Sehgal
Direct Examination by Ms. Wooten, Counsel for Department 722
Cross Examination by Mr. Streisel, Counsel for TSC 783
Redirect Examination by Ms. Wooten, Counsel for Department 820
Recross Examination by Mr. Streisel, Counsel for TSC 822
Further Redirect Examination by Ms. Wooten, Counsel for Department 825

VOLUME III

Testimony of David W. DeRamus, Ph.D.
Direct Examination by Ms. Wooten, Counsel for Department 827
Cross Examination by Ms. Geer, Counsel for TSC 1049
Redirect Examination by Ms. Wooten, Counsel for Department 1216
Recross Examination by Ms. Geer, Counsel for TSC 1227

Testimony of Marjorie McKeown
Direct Examination by Ms. Geer, Counsel for TSC 1237

VOLUME IV

Testimony of Marjorie McKeown continued
Cross Examination by Ms. Wooten, Counsel for Department 1300
Redirect Examination by Ms. Geer, Counsel for TSC 1335
Recross Examination by Ms. Wooten, Counsel for Department 1342

Testimony of John J. Small
Direct Examination by Mr. Streisel, Counsel for TSC 1347

Cross Examination by Mr. Antley, Counsel for Department 1396
Redirect Examination by Mr. Streisel, Counsel for TSC 1418

Testimony of Professor Richard Pomp
Direct Examination by Mr. von Lehe, Counsel for TSC 1425
Cross Examination by Mr. Luther, Counsel for Department 1493
Redirect Examination by Mr. von Lehe, Counsel for TSC 1540

Testimony of Dr. David Andrade
Direct Examination by Mr. Streisel, Counsel for TSC 1546
Cross Examination by Ms. Wooten, Counsel for Department 1644
Redirect Examination by Mr. Streisel, Counsel for TSC 1703

Testimony of Akash Sehgal
Direct Examination by Ms. Wooten, Counsel for Department 1726
Cross Examination by Mr. Streisel, Counsel for TSC 1733

VOLUME V

Testimony of Bruce Fort
Direct Examination by Mr. Luther, Counsel for Department 1748
Cross Examination by Mr. von Lehe, Counsel for TSC 1825

Testimony of David W. DeRamus, Ph.D.
Direct Examination by Ms. Wooten, Counsel for Department 1869
Cross Examination by Ms. Geer, Counsel for TSC 1930

30(b)(6) Deposition of Department 2011

Testimony of Robert A. King, Jr.
Direct Examination by Ms. Geer, Counsel for TSC.....2015
Cross Examination by Ms. Wooten, Counsel for Department 2123
Redirect Examination by Ms. Geer, Counsel for TSC.....2127

Testimony of Orville Sharpe
Direct Examination by Ms. Geer, Counsel for TSC.....2130

VOLUME VI

Exhibit 1, Notice of 30(b)(6) Deposition 2210
Exhibit 2, S.C. Code Ann. §12-6-2320 2217
Exhibit 3, *Media General Communications v. SCDOR* 2220
Exhibit 4, SC Revenue Ruling 15-5 2228
Exhibit 5, Department Determination 2241
Exhibit 6, Explanation of Audit Assessments and Adjustments 2268

POST-TRIAL SUBMISSIONS AND MOTIONS

TSC's Proposed Final Order 2275

Department's Proposed Final Order 2337

TSC's Response to Department's Proposed Final Order 2399

Department's Response to TSC's Proposed Final Order 2456

TSC's Motion to Reconsider dated August 18, 2023 2531

Department's Response to TSC's Motion to Reconsider dated September 5, 2023 2696

VOLUME VII

TSC's Motion to Reconsider Amended Final Order and Order on Motion for Reconsideration dated December 14, 2023 2708

Department's Response to TSC's Motion to Reconsider Amended Final Order and Order on Motion for Reconsideration dated December 27, 2023 2875

TRIAL EXHIBITS

Joint Exhibit # 1 — 2014 TSC Annual Report 2888

Joint Exhibit # 2 — 2015 TSC Annual Report 2962

Joint Exhibit # 3 — 2016 TSC Annual Report 3039

Joint Exhibit # 4 — FY2016 TSC Organizational Structure 3124

Joint Exhibit # 5 — TSC & Subsidiaries Officer Listing 2014-2016 3129

VOLUME VIII

Joint Exhibit # 6 — FY2014 TSC & Subsidiaries Federal Tax Return 3133

Joint Exhibit # 7 — FY2015 TSC & Subsidiaries Federal Tax Return 3287

Joint Exhibit # 8 — FY2016 TSC & Subsidiaries Federal Tax Return 3439

VOLUME IX

Joint Exhibit # 9 — FY2014 – TSC SC Tax Return 3631

Joint Exhibit # 10 — FY2015 – TSC SC Tax Return....3650

Joint Exhibit # 11 — FY2016 – TSC SC Tax Return....3675

Joint Exhibit # 12 — Audit Appointment Letter....3699

Joint Exhibit # 13 — 2014-2016 Corporate Working Papers....3700

Joint Exhibit # 14 — 05/03/2018 Explanation of Audit Assessment and Adjustments....3715

Joint Exhibit # 15 — 08/20/2018 Proposed Assessment....3718

Joint Exhibit # 16 — Emails re: IDR #2 Responses....3722

Joint Exhibit # 17 — SC Revenue Ruling #15-5....3724

Joint Exhibit # 18 — 11/13/2018 TSC Protest....3737

Joint Exhibit # 19 — 11/12/2019 Department Determination....3744

Joint Exhibit # 20 — 07/11/2014 PwC Transfer Pricing Planning – TSC Texas Inventory Markup Analysis....3762

Joint Exhibit # 21 — TSC Memos re: § 482 Study for 2014-2016....3823

Joint Exhibit # 22 — Inventory Procurement Agreement (between TSC and TSC of Texas)....3826

Joint Exhibit # 23 — Inventory Procurement Agreement (between TSC and TSC of Texas)....3835

Joint Exhibit # 24 — Akash Sehgal CV....3851

Joint Exhibit # 25 — David DeRamus CV....3852

Joint Exhibit # 26 — Bruce Fort CV....3861

Joint Exhibit # 27 — Jack Small CV....3865

Joint Exhibit # 28 — David Andrade CV....3866

Joint Exhibit # 29 — Rick Pomp CV....3868

Joint Exhibit # 30 — 2010 TRAC Commission Report....3903

Joint Exhibit # 31 — Global Trading Preliminary Memo 3952

Joint Exhibit # 32 — Distribution Preliminary Memo 3971

Joint Exhibit # 33 — TSC Apportionment Calculations for SC
2014 4010
2015 4012
2016 4014

Joint Exhibit # 34 — Trial Balances 2014-16 4016

Joint Exhibit # 35 — 3 Company Entities 2014-2016 4016

Joint Exhibit # 36 — TAS Report 4016

Joint Exhibit # 37 — National SKU Data 2014-2016 4016

Joint Exhibit # 38 — TSC of Texas Financials 4016

Joint Exhibit # 39 — TSC Product Line Specific Comps 4016

Joint Exhibit # 40 — TSC Summary of Product Line Specific Analysis 4016

Joint Exhibit # 41 — TSC Retail P&L for 2014-16 4016

Joint Exhibit # 42 — TSC Farm Retail Comps 4016

Joint Exhibit # 43 — DeRamus Retailer Set 4016

Joint Exhibit # 44 — DeRamus Global Trading Set 4016

Joint Exhibit # 45 — DeRamus Revised Global Trading Set 4016

Joint Exhibit # 46 — DeRamus Distributors Set 4016

Joint Exhibit # 47 — DeRamus Revised Distributors Set 4016

Joint Exhibit # 48 — DeRamus PwC Distribution Set 4016

Joint Exhibit # 49 — Vendor Payment Records 4016

Joint Exhibit # 50 — Employees by Location 4016

Joint Exhibit # 51 — Gross Profit — Store Directory 4016

Joint Exhibit # 52 — Procurement TB 2015 4016

Joint Exhibit # 53 — TSC-HQ Employees by Legal Entity 4016

Petitioner's Exhibit #1 — Andrade Analysis 4017

VOLUME X

Respondent's Exhibit # 1 — 2000 TSC Annual Report and 10-K.....4018

Respondent's Exhibit # 2 — 2001 TSC Annual Report and 10-K.....4178

Respondent's Exhibit # 3 — 2002 TSC Annual Report and 10-K.....4289

Respondent's Exhibit # 7 — Master Shared Services Agreement dated 09/30/01 4423

Respondent's Exhibit # 8 — Administrative Services Agreement dated 09/30/01 4432

Respondent's Exhibit #9 — Licensing Agreement between TSC of Texas and TSC dated 09/30/01 4441

Respondent's Exhibit # 10 — AON Allianz Marine Cargo Policy.....4453

Respondent's Exhibit # 12 — Minutes of Board of Directors Meeting dated 06/26/01.....4456

Respondent's Exhibit # 17 — Email chain 08/14/18 with Steven Riggs.....4468

Respondent's Exhibit # 18 — Audit Data Sheet 4470

Respondent's Exhibit # 22 — TSC & Subs — SC Audit Years 2014-2016.....4509

Respondent's Exhibit # 29 — 2014-2016 Administrative Service Charge.....4511

Respondent's Exhibit # 30 — TSC Average Store Profit by State 4511

VOLUME XI

Respondent's Exhibit # 31 — Riggs Demonstrative.....4512

Respondent's Exhibit # 32 — Sehgal Demonstrative 4523

Respondent's Exhibit # 33 — DeRamus Demonstrative 4538

CERTIFICATE

Certificate of Counsel 4607

MR. FORT - DIRECT EXAMINATION BY MR. LUTHER:

Q: Good morning, Mr. Fort.

A: Good morning.

Q: Could you state your full name for the record?

A: Bruce J. Fort.

Q: Where are you currently employed?

A: I am a Senior Attorney with the Multistate Tax Commission, Senior Counsel.

Q: Is that your title, Senior Attorney?

A: That is.

Q: The Department of Revenue has asked you to serve as an expert witness in this dispute, correct?

A: Correct.

Q: And are you here as part of your work duties with MTC?

A: Correct. Although I'm -- I've -- I'm giving my own opinions. I'm not testifying on behalf of the Multistate Tax Commission. But I am giving my own opinions and I'm here on the company dime, so to speak.

Q: What were you asked to do in this case?

A: I was asked to render some opinions regarding the appropriateness of alternative apportionment, generally, in the state tax

world and, in particular, the use of formulary apportionment as a means of alternative apportionment, generally, and in separate entity states. And asked to -- finally, to opine upon some of the policy considerations regarding the delegation of duty and delegation of obligations that were touched upon yesterday. I was asked to respond to some of those and how that's been interpreted.

Q: All right. And we're going to get, hopefully, to your opinions in a second, but before we do, let's talk about some of your qualifications.

Could you summarize your educational background for us?

A: I have a B.A. in History, a J.D. from the University of Oregon back in the 1970s and early '80s, and I have been doing tax work since early 1991.

Q: Okay. Could you also just summarize, briefly, your work history and your exp- -- well, let's just start with work history?

A: Sure. After, after law school, I went to work for a general practice firm in Sante Fe, New Mexico. Was there for six years. And in 1991, I jumped over to the New Mexico Taxation and

Revenue Department as a Special Assistant Attorney General. In that capacity, I think I met Professor Pomp in my first -- second day on the job and, and specialized for the New Mexico Tax and Revenue Department, specialized in nexus cases, corporate income tax cases, and gross receipts cases. New Mexico is one of about five states that has a gross receipts tax in addition to a corporate income tax, but in lieu of a sales tax.

After the -- after 16 years in the New Mexico Tax Department, in 2007, I was hired by the Multistate Tax Commission as a staff attorney, as counsel. And during that time, I did a number of, number of brief writing as amicus briefs and really started to develop a -- develop what we have been calling our litigation committee, where lawyers meet a couple times a year and talk about cases, strategy, things like that. And so, that sorts of the basics of it. I do a lot of audit narrative work, which is where our auditors come to us with facts and we try to put it into a narrative.

We do not select audits, Your Honor, nor

do we issue assessments. But we do prepare audits, mostly of corporate income tax for about 23 states, currently. And then we right up narratives, trying to explain our view of the law and how it, how it impacts those facts and try to write up the facts and make recommendations to the States. So, a large part of my job duties involves coordinating, not coordinating the audits, but coordinating the narratives, the legal narratives that go with those audit -- audits. I do a little bit amount of discovery, not too much. And do a lot of training. I've trained, probably, 20 tax departments over my fi- -- 16 years now with the, with the MTC. And do some lecturing, some presentation work, in addition to that.

Q: Do, do those trainings deal with multistate corporate taxation?

A: Almost exclusively, yes. I also serve as a staff attorney, a staffer for a uniformity committee, where we development uniform regulations and uniform laws -- proposed uniform regulations and laws, models, we call them. We present those to the states. It's a process where the states are very much involved

in developing that. We then present them through a formal process if a sufficient number of states say that would consider adopting it, it then becomes an official model of the MTC, and then we leave it up to the states whether they actually want to adopt that official model or not.

So, a fair amount of my work has been either as a staff counsel or as a hearing officer for many of these proposed uniformity regulations. And the majority of the ones I have worked on have been involved in income tax and corporate income tax.

Q: Are, are those -- well, do you write policy papers, or is that what you were just describing?

A: I do write some policy papers, yeah. We do write white papers in conjunction with some of our uniformity projects. The last white paper I wrote, last year, had to do with the differences between combined filing and state consolidated filing, and whether it was appropriate to allow -- in our combined filing model, whether it would be appropriate to have a federal consolidated filing model. So, I

wrote a white paper looking at the state's experience with combined filing versus consolidated filing and ultimately concluded, that because the combined filing return is so similar to the federal consolidated and there really aren't as many disputes out there as some people think between what goes into the combined group, it was appropriate to amend our models for combined filing to include this consolidated filing option.

Q: What is the SITAS Committee training?

A: SITAS Committee is the State Intercompany Transactions Advisory Committee. Ironically, we just decided to dis- -- disband it a few months ago. It was an attempt by the states to coordinate, through the MTC, to coordinate intercompany transactions -- responses to intercompany transactions. And it had been called the ALAS Committee. And Professor Pomp and I were joking yesterday, that it wasn't a very good name given for it. The -- and that was the Arm's Length Adjustment Service. And we decided about six years ago to expand the scope of the committee to take in not just arm's length adjustment, but the whole range of

potential state responses to income shifting strategies and how the states should coordinate that. So, we didn't want to limit it just to, what I'll call, 482 transfer pricing kinds of adjustments. So we changed the name. We still do all of those activities for the states, but we felt like having a committee was unproductive because it wasn't really separated from the other trainings and other kinds of activities we do. And so, once we did that, we felt it was kind of inappropriate. And second thing is, some of our member States went out on their own and developed their own very rudimentary transfer pricing abilities, and so they had less need to try to coordinate through the MTC. And then -- so that's what the committee is. Again, we just disbanded a few months ago. But that was a, that was a part of my stuff.

Again, it was always, kind of, a little bit of an oddity because we were already doing state intercompany transfer, transfer adjustments as part of our normal training activities and uniformity activities.

Q: Have you ever served as a -- excuse me, have

you ever served as a hearing officer for apportionment regulations?

A: I think I've served on hearing officers for five apportionment regulations, including two apportionment regulations on captive REITs, what I would call abusive captive REITs that Professor Pomp mentioned yesterday. That involves adding back those REITs income. I've served as hearing officer for a special apportionment regulation for financial institution holding companies. I have served a hearing officer for a financial -- for how to apportion the income upholding companies because we have changed our sales factor. And I, and I served as the hearing officer and staffer for a 2010 change to the MTC Model Regulation on Equitable Apportionment. And so, we made that change. I think, I might've been the driving force there. And I was also the hearing officer on that change to our model apportionment regulation. When to invoke, what I'll refer to as Section 18, Your Honor, even though I've tried to get through my head, it's 12-6-2320 here in this state.

Q: Have you ever testified as an expert in a trial

before?

A: Just -- testified twice, but just in one case and that was in Utah.

Q: Have you ever testified before any legislative committees?

A: I've testified infrequently in front of legislative committees. Testified last year -- no, excuse me, three years ago now in Pennsylvania. I testified last year in Vermont, three or four times. New Mexico, Wisconsin, and I think, a couple other states in there.

Q: Did any of that testimony involve alternative apportionment and combined reporting?

A: All of it involved corporate income tax, generally. In New Mexico I testified on many issues when I was a staff attorney, but all of them involved corporate income tax, generally. Definitely, formulary apportionment issues, single sale factor, not so much on alternative apportionment.

Q: Was your testimony -- that -- was the testimony that you were providing perspective from tac-- from tax policy ---

A: Absolutely. We're trying to talk about what is

good tax policy, what are good normative rules, how that should be incorporated into legislation.

Q: I want to show you what I think has been marked as Joint Exhibit 26.

Do you recognize this document?

A: That's my Curriculum Vitae, yes.

(Joint Exhibit Number 26 was introduced into the record at this time.)

Q: And could you just scan over it briefly and let me know if that's a correct version of your CV?

A: It is -- I think I completed it last week.

Q: Do you, do you tailor it all based on the type of -- the audience you're providing it to?

A: Well, I would call it an incomplete curriculum vitae, and, yes, I actually did try to pull out presentations, presentations or experience I have had relating to alternative apportionment, combined filing, and apportionment, generally. So, yes, this is actually a resume that does not reflect my entire body of work. But it is something that I thought would be relevant to the Court to consider, you know, these are the kinds of activities I wanted counsel -- opposing counsel, of course, to understand, as

well, these are the kinds of things I've spoken on, the kinds of activities I've done that I thought were relevant to this case. I don't have any gross receipts cases in here. I don't have any nexus briefs I worked on. So, the briefs I listed, it's a partial list of briefs that I've authored dealing with corporate income tax, formulary apportionment, alternative apportionment.

Q: And I just want to clarify, you said you pulled out the things you thought were relevant. I think are you saying you, you -- that's how you -- what you included on this CV, right?

A: I did.

Q: Okay. Is there anything that we haven't discussed in terms of your background that is not on this resume that you think is relevant for the Court?

A: No. I've spent most of my professional career doing state taxation, and I think that's fairly reflected on this resume.

Q: Okay.

OFFER AS EXPERT:

MR. LUTHER: Your Honor, at this time, the Department would ask the Court to qualify Mr.

Fort as an expert in state and local tax policy considerations related to multistate taxation, including separate entity reporting, combined reporting, standard apportionment, alternative apportionment, and -- (coughing) -- excuse me -- responses to income shifting strategies, including transfer pricing.

MR. VON LEHE: Your Honor, yes, I'd like hear a little more, Your Honor, about his tax policy background. Seems ---

THE COURT: You wish to -- do you wish to voir dire him?

MR. VON LEHE: Pardon? No. I think that could probably be through questions here without my doing the examination. I would be perfectly satisfied if Mr. Luther does that. But I'd like to hear a little more about what has he done so far as tax policy as opposed to being an advocate of combined apportionment. The MTC has been described, I think, fairly accurately as train state auditors and supervises audits, etcetera, etcetera, but it's hardly a tax policy organization. This is a state-oriented organization for the purpose of doing audits and presenting litigation in the tax area, of

course, on behalf of states. And it's just -- I just don't see the tax policy in here. It -- we mentioned 23- -- excuse me, they mentioned some policy, some policy papers, I believe was said. I mean, who was that for? Was this something that was for -- generally published somewhere or is it -- has to do with, this is what we're going to do to audit somebody? In other words, I just don't see the tax policy in this.

THE COURT: Mr. Luther?

MR. LUTHER: I'm happy to ask some additional questions to try to see if we can't answer those ---

THE COURT: If you wish ...

Q: Mr. Fort, you just, you just heard some of my colleagues questions for you. In terms of what you described in your work experience, what factors does tax policy considerations, in general, have with what you have done through your body of work?

A: Well, it has a substa- -- a substantial impact on what we do. The Multistate Tax Commission is not an auditing -- just an auditing division. Our job is to -- we were originally

formed, Your Honor, in 1967 in response to concerns that the federal government was going to preempt corporate taxation. Our, our four goals are to effectuate a more fair reflection of tax liability to encourage taxpayer convenience, to more -- to bring uniformity where it's possible to the world of corporate income tax and a multistate taxation generally. So, those are our -- and to avoid double taxation, those are our policy goals that were enacted as part of the Multistate Tax Compact, which was a compact entered into originally by eight states in 1967 that formed the Commission. And our, our goal, if you will, is to aud- -- is to work with the states for good tax policy. Currently, there are 15 states that are actually members of the compact, but virtually all States, except for Nevada, have a connection to us. Our job is to work on policy. We have a Uniformity Committee that its goal is to develop uniform laws and regulations built on tax policy. And I have been staffer for the Uniformity Committee and have worked on innumerable uniformity projects for the last 16 years. That is our job there,

is to promote what we consider to be good tax policy based on good normative principles. So, that is -- that is my work history. That's what I do.

I haven't really been a litigator since joining the Multistate Tax Commission. We don't go into court very often. I don't think we've ever actually -- go into court in a trial situation, we have tried once. We do write amicus briefs, because amicus briefs tend to be based on our understanding of what good tax policy is. And, in particular, I've listed some briefs here that we -- that I have authored that talk about the tax policy behind alternative apportionment and behind formulary apportionment. So, I would disagree with my distinguished colleague that we are a litigation group, we're not. We're not an audit group. The Multistate Tax Commission is a policy group.

Q: Okay. Mr. -- Mr. Fort, you just mentioned that MTC has 16 compact states?

A: Yes.

Q: Is South Carolina one of those?

A: It is not.

Q: Have you been here for the duration of this trial?
A: I have.
Q: And you've heard all the testimony?
A: I have.
Q: I believe a definition of tax policy was offered yesterday, something along the lines of normative principles that should underlie state tax systems. Do you agree with that definition?
A: More or less, yes. I think that's a reasonably good definition.
Q: Okay. And you mentioned that you have -- that you met Professor Pomp a few days on your job in New Mexico.
A: Right.
Q: And have you had occasion to interact with him since then?
A: Professor Pomp and I have interacted for the last 31 years and we've appeared on panels together, we have had some interesting disputes about the law over the years. And, in fact, my first couple months working for the MTC, Professor Pomp was an instructor at what I would call the Davis Tax Camp, and I was so

fascinated by what he had to say, I think we stayed up until 1:00 or 2:00 in the morning, two nights in a row, talking tax policy. He's been a -- he's really been a guiding light for me ---

MR. VON LEHE: I hate to ---

A: --- in terms of tax policy.

MR. VON LEHE: --- but I think we've heard enough for me not object.

THE COURT: Okay.

(Laughter.)

MR. LUTHER: Could -- I'm just going to ask him one more question before ---

THE COURT: Okay.

Q: I believe you were described a minute ago by my colleague as someone who advocates for combined reporting. Would you use that same description for Professor Pomp?

A: Based on what I've read of his, he's been a -- and what I heard him say yesterday, yes, of course.

Q: Okay.

THE COURT: He's so qualified.

MR. LUTHER: Thank you, Your Honor. Quick housekeeping item. I know we had talked about

trying to get through qualification first, but do you want to keep going or are y'all ready for lunch, or?

MS. GEER: John -- (whispering) ---

MR. VON LEHE: I'm fine to break for lunch.

THE COURT: Yeah, let's break for lunch.

(Off the record from 12:03 p.m. until 1:15 p.m.)

THE COURT: Okay. I believe we're starting a little early. I mean, y'all ready to go?

MR. LUTHER: I'm ready.

THE COURT: Y'all's is next?

MR. VON LEHE: Yes. Yes, Your Honor.

THE COURT: Okay.

Q: All right. Mr. Fort, I think right before lunch we had just finished qualifying you, so I want to move into some of your opinions in this case. But in, in terms of your role in state tax policy, can you just educate the Court on the difference between separate accounting and formulary apportionment?

A: I think -- sure. So, separate accounting means you would attempt -- the Supreme Court describes it, you attempt to describe the income and/or losses generated from particular aspects of a business, such as a factory or a

sales force or something like that, and you try to loca- -- localize those profits within a particular state or taxing jurisdiction using arm's length rea- -- accounting. Formulary apportionment, on the other hand, looks to the unitary business as a whole and attempts to allocate profits based upon the percentage of markers indicia of, what we would call, the factors of production within each state -- or within each taxing jurisdiction, so they're very different concepts. I think it's important to remember that South Carolina uses formulary apportionment now. It's not -- it's, it's not the same thing as combined reporting, they're very, very different concepts, but -- and the States have used a formulary apportionment system in the property tax arena, going back even to the 1870's, and the reason they do that is, it was felt that it was impossible to reflect those intangible values of an on-going -- going business just by separately accounting, if you would, for the value of a railroad stationed in New York versus the value of a railroad stationed in Chicago, they said the only way you could do

that is to value that railroad as a unit, and so that's how we got to the concept of the unitary business principle that a business function, if you will, that can only be properly evaluated as a whole. It's indivisible is, is one, one way a unitary business has been described for that purpose. And the states have been using formulary apportionment, really, for -- from when the states started doing income taxes in the 1920's, as I mentioned, its origins in the property tax arena go back really to the railroad cases of the 1870's. So that's the broad issue. And, again, it's important to note that South Carolina, my understanding, would -- has the unitary business principle at work today when it comes to a single business operating within and without South Carolina. There's no attempt to separately account for the value of a factory in South Carolina versus a sales platform in another state.

OBJECTION:

MR. VON LEHE: Your Honor, if I may impose an objection. I believe the witness is testifying as to South Carolina law. This he should not

do because he is -- because it's against the Rules of Evidence for him to give opinions on South Carolina law to the Court.

THE COURT: Any response?

MR. LUTHER: Your Honor, I can certainly instruct the witness to confine his opinions to tax policy, generally, and not the opine on South Carolina ---

MR. VON LEHE: Thank you.

MR. LUTHER: --- law.

MR. VON LEHE: Thank you.

Q: All right. So are you familiar -- you heard Professor Pomp testify yesterday about UDITPA ---

A: Yes.

Q: --- Section 18, in particular? Are you familiar with that?

A: Very familiar.

Q: What, what is UDITPA?

A: The Uniform Division of Income for Tax Purposes Act. It was promulgated by the Uniform Laws Commission on July 16th, 1957.

Q: And can you just, very briefly, describe the history of UDITPA as enacted by various -- well, not enacted by various states?

A: Well, it was first enacted by Alaska in 1959, but the concept of formulary apportionment had been developed in various states. The actual three-factor formula, which goes into UDITPA, which is an attempt to measure income generation by property, payroll and sales, it's sometimes referred to as the Massachusetts Method, and that had been around at least since the 1940s. And so, in response to, in response to some court decisions that had broadened the concept of what states could tax in the -- in, in terms of interstate business, Congress enacted something called Public Law 86-272 in 1959 and in the 1960s there was something called the Willis Committee, and the Willis Committee was formed to try to figure out how -- to try to figure out whether preemption of state taxation was necessary. And in particular, the Willis Committee was suggesting preemption using a two-factor formula, sales and payroll, and the states responded to that legislation by enacting the Multistate Con- -- Tax Compact among about eight states. The MTC was formed to administer the Multistate Tax Compact, and UDITPA is Article 4 of the

Compact. So the states were -- decided to choose a formula that had -- was out there, it'd been out there for about six or seven years, some have described as a shotgun wedding because the states needed a formula everyone could agree on and do it quickly to head off that federal preemption. And it was successful, or it has not been subsequent federal preemption of corporate income tax, but that was all in 1964, the Willis Committee. MTC formed in 1967. At the time the Willis Committee was meeting, about two-thirds of the states already had formulary apportionment -- actually, more like three-quarters, a quarter were still using separate accounting. Within a few years of the MTC being formed and the Compact, every state that -- well, states, generally. I don't want to mention South Carolina, every state adopted formulary apportionment as their means for, for determining how much income a taxpayer makes within the state.

Q: What is income isolation? Are you fa- -- well, are you familiar with that term?

A: I'm very familiar with the term. Income

isolation is an attempt to lower income taxes by establishing, establishing subsidiaries or establishing in low-tax jurisdictions. It can also mean establishing -- shifting profits to a company such, as a captive insurance company you heard mentioned yesterday. A captive insurance company generally speaking is not subject to state income taxes, so there's -- it's possible to shift income to a captive insurance company or another non-nexus jurisdiction. So it's an attempt to use former concepts of nexus to isolate your income generated within an operating business that operates within the taxing state.

Q: Were, were income isolation strategies common at the state level during those early years of UDITPA?

A: I don't think so. And I'm basing that, in part, on what I've -- on readings I've done and also based on some practical experience. I litigated a lot of income shifting cases in the 1990s. It seems like most of the income shifting strategies really evolved in the, the mid to late 1980s.

Q: Did UDITPA have official comments at any point?

A: UDITPA, UDITPA went six -- actually, had eight years without official comments. In 1966, the same Uniform Laws Commission that Professor Pomp mentioned yesterday that included -- that -- that's based in Chicago and, and they also do the Uniform Commercial Code, they've published official comments to UDITPA in 1966.

Q: Did those comments discuss intercompany transactions at all?

A: Just briefly, just -- in two places they discuss intercompany transactions. One is back to the payroll factor where they suggest that, where a company is using payroll that might put -- more properly be reflected -- using someone else's payroll might more properly be reflected on the taxpayer's payroll apportionment formula, that that might be an appropriate section to use Section 18. The second place where those comments discussed the potential distortive effect of intercompany transactions is a reference to the sales factor for tangible property, and they suggest that where sales of a manufacturer are sold to a related party who's outside of the state and then that related party then sells it back into the

state, even though they're two separate entities, I say in the -- in a context where you're not using combined filing. They, they use the word consolidated. And in that context, it may be appropriate to use, what we call Section 18, alternative apportionment, to reallocate those sales back to the manufacturer because the sales are coming back into the state but they're not being -- coming back in sales from the taxpayer.

So those are two examples. And, really, the only two examples I saw in those comments where there was some awareness that intercompany trans- -- transactions could create the potential for distortions of income. And in both situations, the uniformed drafting -- the, the Uniformed Laws Commission, their Drafting Committee said it'd be appropriate to use alternative apportionment in those two situations.

Q: How does the historical background in state tax policy considerations you just discussed concerning multistate taxation relate to your opinions today?

A: Well, I think it's, it's the Willis Commission,

which I just mentioned, I think is critical, because you had a potential Federal preemption that would have opposed a property and payroll factor, and the States were very concerned that without a, without a sales factor, which was based on the marketplace, it's a destination basis, that without a sales factor, that the income-producing attributes of the marketplace would not be reflected. So the market states, the ones that were not manufacturing states, were particularly concerned that this would result in a under-representation of their income. So the sales factor, from day one, has intended to reflect the contributions of the marketplace.

Now, in 2015 when the MTC rewrote, what we call, Article 4 -- we can't literally rewrite UDITPA, we don't own it, but we wrote our, our Article 4 for sales other than sales of tangibles, we made clear that the goal of that sales factor is to represent the market. So we actually say, the purpose of Section 17 is to reflect the market for sales and where those sales are. So we've made explicit now, what has always been implicit in the structure of

UDITPA, and many, and many tax policy professionals will say as much. And, of course, Professor Hellerstein says as much as well. The sales factor has always been intended to represent the income generated from the marketplace from sales.

Q: Okay. You've, you've discussed formulary apportionment a good bit. Are there any normative principles in formulary apportionment that are seen in UDITPA?

A: Well, yes. Some of the -- I mean, one of the great normative principles is, is an attempt to -- attempt at uniformity and consistency. But that -- some of the normative principles are -- in order for an apportionment formula to work, it has to capture income generating attributes, and it has to, it has to reflect in a clear economic sense where income is earned. And so, in theory, the sales factor -- the sales in State A should generate the same amount of income as sales in State B. In theory, and the theory underlying formulary apportionment, because you're using it to measure generation, is that a unit of factors, property, payroll and sales -- should generate, roughly, the same

amount of income wherever it's located. Across jurisdictional lines, across divisional lines, across corporate legal lines, a given amount of property or payroll or sales should, in general, generate equal amounts of income. And there's, there's an economic principle behind that as well. Which is that, if you had a particularly -- if part of your unitary business was pre- -- generating a particular high amount of income relative to other parts of your business, if you would focus on that, so if you had this amazingly productive procurement company, you would extend that procurement company and start procuring for other people. So that's part of the. the -- part and parcel of the formulary apportionment system is that, given amount of payroll -- property, payroll and sales should generate equal amounts of income across jurisdictions, and of course that's reflected well in the *Container* decision in 1983 where the Supreme Court really compared formulary apportionment to arm's length accounting far better then I put on here today. And the, the U.S. Supreme Court tried to explain why the States have not

been in favor of, of geographic accounting principles and have chosen to use formulary apportionment instead.

Q: Were you here earlier this week when Mr. Small testified?

A: Yes, sir.

Q: Okay. He talked about there being different definitions of a unitary business. In, in your field of state tax policy, is there a general definition of a unitary business that is used?

A: I would say, there are two broad general definitions. One is, contribution and dependency, and the other is a unity of operations as evidenced by common management, common control and a flow of value between them. I think, at the end of the day, those, those are basically, over-legalistic ways of trying to describe the same concept of a synergy between companies, and as you -- as Supreme Court said, again, in *Container*, the definition of unitary are not unitary. Now, a few states have gone further and explicitly said, this is what a unitary business must, must look like. You have to have -- Colorado, in particular, sets out about six factors. But

I think there is a broad general agreement on what constitutes a unitary business.

Q: When it comes to discussing what constitutes good tax policy or bad tax policy, why would it be important to determine whether a taxpayer is part of a busi- -- a unitary business group?

A: Well, again, because one of the basic principles of formulary apportionment is that it is difficult, if not impossible, to use separate accounting to measure income generation across geographic lines. You know, again, the classic example of a factory in one state and sales force in another state. It's, it's -- to the extent these companies are unitary it would be difficult, if not impossible, to do so otherwise. Professor Hellerstein in his textbook says that, to use separate accounting is to go into the Alice in Wonderland world. I'm quoting from Professor Hellerstein. And I, and I think that we saw some of that reflected in Professor Pomp's own writings on the topic.

So, if it is impossible to accurately reflect income generated across a unitary business using anything other than the unit

method, then it follows that good tax policy should take that into consideration, that there are gonna be practical limitations and there are gonna be limitations on, on -- it actually triggers horizontal equity concerns. If some companies are able to use, able to use -- I hate to say it, but high pow- -- high priced accountants and lawyers to achieve an end that other companies can't. So, formulary apportionment has the great advantage of, it's easy to determine the location of these factors. There's really very little dispute about the location of property, very little ability to dispute the location of payroll, and UDITPA in both of these circumstances uses the easiest to audit locations that you can. So they're not trying for perfection, they're trying for ease of administration, to cut back on, on burdens. And then, the sales factor is a -- proving a little trickier, but with the sales of tangibles at least, it's fairly easy to determine they're -- where they -- where they're delivered to the customer by the taxpayer is the sales factor. So those are easy to determine factors. And so, the main,

the main normative rule, as you will, is, it ensures horizontal equity between taxpayers to have a simple, bright-line test that can be followed, and UDITPA achieves that.

Q: Let me preface the next question with, I'm not asking you to opine on South Carolina law, okay, but based on the testimony that you've heard and the evidence we've seen this week, are there any -- can you briefly describe any facts that you think support -- or evidence the general description of what a unitary business is?

A: Everything I've heard here this week would suggest that these are three highly unitary businesses. And I think the degree of unitary-ness may have a -- plays a role in the ability to use transfer pricing. So, these are three highly integrated businesses, they clearly meet the contribution dependency test. TSC of Texas could not function for a minute without TSC and TSC of Michigan, and vice versa, TSC could not function without that -- without the procurement of products to sell. Now, whether that procurement really takes place, may be another matter, but they couldn't function

without that.

OBJECTION:

MR. VON LEHE: Your Honor, I'm going to object to this. I tried not to for awhile, but it's now getting to the point where he's taking the taxpayer, who is here before you, saying that it cannot function with the use of transfer pricing, and this is a matter of South Carolina law. It's the ultimate question before the Court. If he wants to talk about tax policy, and obviously, he's here for that purpose, he should not be allowed to give testimony as to what the ultimate conclusion in this case ought to be, which is what he's doing.

MR. LUTHER: Your Honor, I think this is the kind of testimony that the Supreme Court specifically permitted in the *Vortex* case. As you know ---

THE COURT: Let, let me pull it up.

MR. VON LEHE: And, Your Honor, we'd like to ask that the testimony be stricken.

THE COURT: Let me hear the rest. Go ahead, I've pulled it up.

MR. LUTHER: Your Honor, Rule 704 of the Rules of Evidence makes it clear that an opinion is not objectionable just because it embraces an

ultimate issue to be decided by the trier of fact. One of the questions -- one of the issues that I think Your Honor will have to decide as a preliminary matter in this case, is whether the taxpayer is part of a unitary business group. But as the Court said very clearly in *Vortex*, just because your testimony touches on the ultimate issue, it's not objectionable. I think in *Vortex* what you see is, Professor Freeman, who's qualified as an expert, was able to provide a number of facts instituting specific acts that were committed and how those acts constituted a breech of a fiduciary duty. The breech of the fiduciary duty is obviously a legal conclusion that the Court ultimately had to make, but the Court said very clearly here, that just because he provided testimony as to which facts may have constituted a breech, that itself was not impermissible. And I think what I've just asked Mr. Fort to offer is, in his definition, in a tax policy world, and what constitutes a unitary business. And, obviously, Your Honor will decide whether that's a helpful definition or not. But under those general definitions,

what facts does he believe constitute the unitary business.

THE COURT: Will you explain to me why my determination of what constitutes -- already ask- -- I know it's kind of obvious, but I'll still go ahead and ask. Why, what constitutes a unitary business, is a question that I need to answer?

MR. LUTHER: Your Honor, if you go all the way back to the beginning of the week, which feels like a long time ago, there were a number of questions asked on cross-examination of the Department witnesses about whether TSC, taxpayer, is part of a unitary group. And the questioning was designed to suggest, and I think it's in, in relation to the Department's Revenue Ruling 15-5, that whether you get to use combined reporting depends on whether you're dealing with a unitary business. So, to the extent an issue in this case is, can the Department require combined reporting, there's sort of a presupposed answer. And that is, this is a unitary business.

THE COURT: All right. Any response?

MR. VON LEHE: Yes, Your Honor, I do have ---

THE COURT: Okay.

MR. VON LEHE: --- a response ---

THE COURT: And ---

MR. VON LEHE: --- so. This ---

THE COURT: I'm leaning his way, so let me tell you why.

MR. VON LEHE: Yes, Your Honor, please.

THE COURT: And you can respond. Is, is the question and the answer related to the factual analysis of what is a unitary business. It did not go into a legal conclusion regarding South Carolina law, that I've heard, and it's for that reason I lean toward letting him testify about that and not -- because your que- --your objection was a little belated, but, in not striking the testimony. So, can you respond to that?

MR. VON LEHE: Yes, Your Honor. His, his response a moment ago was in- -- including two things. First, the unitary business principle, which by implication if not directly, he said South Carolina was a unitary state. Now, if not directly, he certainly did indirectly, because he next said, that these three entities cannot function without -- and they can't -- there

cannot be a transfer pricing between them, he said that too -- also. And these two things combined is a, clearly, a question of the law and the law of South Carolina, which is before you. And I did ask that the testimony be stricken and I would like to ask that again.

THE COURT: I'm just gonna, respectfully, at this time overrule your objection on this particular question.

MR. LUTHER: Thank you.

THE COURT: Now, my an- -- I do have a concern. You asked about -- you said transfer pricing.

MR. LUTHER: Correct.

THE COURT: And what was his answer regarding? I mean, how -- I want to make sure that I'm making the right ruling on that.

MR. LUTHER: To be honest, Your Honor, I don't remember what his answer was about transfer pricing.

THE COURT: Well, I tell you what. I'm -- can you -- do you have the question in front of you?

MR. LUTHER: I, I think -- I don't. The question was I think about ---

THE COURT: Well, strike it and let you answ- -- ask it again so I can ---

MS. GEER: Yes, let's do that.

THE COURT: --- make sure I hear the answer?

MR. LUTHER: Okay.

THE COURT: Okay. So, I'm gonna strike the previous answer, and then ask the question again. And then, my only issue's gonna be -- I'm good with everything, but I got to hear the answer regarding transfer pricing.

MR. LUTHER: Okay.

THE COURT: All right.

MR. LUTHER: Would it be helpful if I tell him anything transfer pricing, let's save for a follow-up question?

THE COURT: Yeah. Yeah, you can do that.

Q: Can you do that, Mr. Fort?

A: I can -- respectfully, Your Honor, I'm not sure I said the words transfer pricing just now.

MR. VON LEHE: Your Honor, If I may, if I may? We'll have it read back if necessary, but he certainly did say transfer ---

THE COURT: Well, I don't, I don't need to, 'cause I've already stricken it, so.

MS. GEER: He's already stricken it.

MR. VON LEHE: Thank you, Your Honor.

A: Your Hon- -- my understanding the question was,

based on what I've heard here today, are these entities operating as a unitary business ---

THE COURT: Yes, sir.

A: And, and, Your Honor, I think that's the question that was asked of me. And I said that, under the contributions and dependency test, you look at, is one entity contributing to the other, and is one entity benefitting from the other. And from everything I've heard here this week, those tests would be met, i.e., Tractor Supply Company of Texas contributes services and property to Tractor Supply, Tractor Supply, in turn, contributes a marketplace to Tractor Supply of Texas. So under the contributions and dependency test, I, I think I was asked, you know, are these entities unitary, and I would agree with all of those who testified previously here that, yes, these entities would meet every commonly recognized legal test for unity of operations ---

THE COURT: You also testified about Tractor Supply Michigan, so I ---

A: Tractor Supply of Michigan, I -- is, is -- I should've amended to include that in the

answer, Your Honor, because the volume discount, if you will, of having more stores leads to economies of scale, that's one of the three things the U.S. Supreme Court has looked at as an indicia of what constitutes synergy, if you will, of having a unitary business. So, yes, I would, I would say that the common management, ownership, flows of value, unities of operation of all three of those entities constitutes a unitary business under any recognized test. It would constitute a unitary business under, under any sort of standard that the Multistate Tax Commission would impose.

MR. LUTHER: Your Honor, I'm gonna -- I, I just want to make sure the record is clear, 'cause I know my question was stricken. He's responding to your question, which I think was, essentially mine, but ---

THE COURT: Yeah, okay.

MS. GEER: Right.

MR. LUTHER: I'm gonna re-ask it ,and I'll just say ---

Q: Mr. Fort, if, if your answer to my question is basically the answer you just gave, you can just say, yeah.

A: I think, think that was it.
Q: And I think my question was, can you give me some specific examples of evidence or testimony that you've heard this week that you think meet or demonstrate the general definition of unitary business in the tax policy field?
A: Yes, I will. First of all, I heard testimony this week that all Tractor Supply's procure- -- Tractor Supply of Texas has the procurement function. Ultimately, those employees report to Tractor Supply, so Tractor Supply has a management role there exercising common management over Tractor Supply of Texas. I have heard testimony this week that, that all of the inventory that Tractor Supply sells in its stores, all or most of it comes through Tractor Supply of Texas, so that is that flow of value, and the Supreme Court's made clear the fact of whether, you know, flows of value are flows of value whether, whether they're at arm's length or they're not is a different issue. So you have flows of value.

You have unity of use, in that you have common payroll functions, common other kinds of, of accounting. I don't think I heard tax,

but I did hear legal, you know, common, common unity of use of the overhead, if you will, and you have synergies that arise from having, you know, having a large business. So, so all of those facts which I've heard, and I've heard nothing that would contradict that, suggest that these three entities would be considered unitary entities under, under any recognized legal standard. And again, I won't -- I guess -- I can't, maybe, say that they're unitary, but I can just tell the Court that, that the commonly recognized legal standards we've heard here today.

Q: All right. I want to switch gears just a little bit. You talked earlier about the single sales factor.

A: Yes.

Q: But let's zero in on that. And, what is the single sales factor?

A: Well, instead of measuring property, payroll and sales which the Supreme Court said is the, is the -- they didn't say the gold standard, I think, they said the benchmark standard. Many states have adopted -- presumably, for economic development reasons, have adopted use of a

single sales factor. What that means is that, without a property and payroll factor, the sales factor has to represent the -- it's the legislature's decision that this represents the income producing activity. And in that context, if a -- sales represent more than just the sale from one -- from the, the taxpayer to the customer, that doesn't create any income, it has to be a sale for more than the, than the buyer paid for it, and it has to do something to incre- -- to increase sales and make a profit. And so, and so the concept of goodwill is imbedded in the sales factor. Goodwill is -- from an accounting standpoint, means everything of -- all the value of a company over and above the, the value of its hard assets, in this case it would be stores and ---

OBJECTION:

MR. VON LEHE: Your Honor ---

A: --- equipment.

MR. VON LEHE: --- I'm gonna have to object to this also. It's getting into economic testimony for which he's not qualified. Goodwill, etcetera, the value added by goodwill, etcetera. He's not qualified to answer that, he hasn't been

qualified to answer that and he's not qualified.

MR. LUTHER: Your Honor, I'm happy to rephrase the question. I think ---

THE COURT: Well, I'll say you've got two options. You can -- we -- well, I mean, he's already given -- he's, he's answered about Goodwill. I -- but you can qualify him if you wish, or we need to move.

MR. VON LEHE: I mean, I could have that testimony stricken with regard to goodwill.

THE COURT: All right.

MR. LUTHER: Your Honor, I guess the clarification would be, I'm not asking him for an economic opinion, I'm asking him in terms of state tax policy ---

THE COURT: But ---

MR. LUTHER: --- what is the single sales factor measure.

THE COURT: I'll strike only his answer regarding goodwill and -- but you can still lay a foundation for that if he's -- if that fits within his expertise, so you, you have the option there.

Q: Mr. Fort, when it comes to tax policy

considerations as to which sales -- which factor a state might use for apportioning income, sales -- is one of them as you just discussed, correct?

A: Correct.

Q: And in the tax policy world, what are some of the considerations for why you might use single sales, what is trying to capture or measure?

A: It is trying to capture the contributions of the marketplace to income generation and ---

OBJECTION:

MR. VON LEHE: Again, Your Honor, I object to this. This is economic testimony.

THE COURT: Well, if ---

MR. VON LEHE: I don't care if he said what world it comes from, it's economic testimony, I object to it.

THE COURT: I'll overrule that objection.

A: And aga- -- again, I, I think this is well documented by, by Professor Hellerstein and others that, that when the states were choosing to use a sales factor instead of the suggested property and payroll factor, it was an attempt -- the states felt that it was necessary to, to capture the income-producing as- -- attributes

of sales, of the marketplace, because they weren't captured in the property factor 'cause the property factor excludes intangible property such as goodwill, it's not in the property factor, it's not captured in the payroll factor, it is captured in the sales factor. And this issue actually came up and Professor Pomp testified yesterday that a taxpayer may wish to petition for inclusion of intangible property as a fourth factor, and that issue actually came up in the *Coca-Cola* case where the Court said, no, your intangible properties, the value that people want to buy Coca-Cola, that's already in the sales factor, that's reflected in the sales factor.

Q: All right. Well, let's move on to talk about combined reporting in terms of your opinions in this case. From a taxpayer's perspective, what are the tax policy considerations why combined reporting would be a reasonable method of apportioning the income of a multistate business?

MR. VON LEHE: Your Honor, if I may. I assume that question meant from a tax policy instead of a taxpayer's perspective, and I'm not certain,

but I would like a clarification on that.

MR. LUTHER: I -- it actually included both, but I'll ask a better question.

Q: So in terms of tax policy, I want to ask you first from the taxpayer's perspective, then I'm gonna ask you from the state taxing agency's perspective. From the taxpayer's perspective, what would be the policy considerations why combined reporting would be a reasonable method for apportioning the income of a multistate business?

A: Well, you can have situations where you -- first, first of all, something simple, which is you are allowed to include losses within the, within the apportioned tax base. So you might have one company with a loss and one company with a gain, so that's the same principles underlying the federal consolidated system where losses are, are netted against all the companies within the federal consolidated group. It should result in a more accurate reflection of, of income. Taxpayers are interested in a more accurate reflection of income and there've been certainly many times where taxpayers have sought combined filing to

more accurately reflect their income. In the *GTE* case out of Kentucky in 1993 is an example where the state said we don't allow combined filing and they successfully petitioned to allow combined filing to more accurately reflect GTE's income within the state. So it is a more accurate reflection of income. As a tax policy method thing, that's something states and taxpayers alike want to do, we want to have vertical equity, we want to have horizontal equity between companies, we want to encourage a fair reflection of income as a policy matter just so there's faith in the, in the tax system so that everyone voluntarily pays and so that's, that's some of the reasons why a taxpayer would seek it, but the main reason again, is to de-silo losses that would otherwise not be able to be reflected, and you could have situations as I've seen in some cases, where there's a higher percentage of, of apportionment factors relative to income outside the state and the, the taxpayer's attempting to bring that in to more -- again, more fairly reflect, and if it's a unitary business it does more fairly reflect the

activities that took place within the state.

Q: All right. Let's look at the other side. From the taxing jurisdiction's perspective, what sort of policy considerations would weigh in favor of combined reporting as a reasonable method to apportion the income of a multistate business?

A: Well, the most obvious policy consideration I think we've seen on display here this week is, as the Supreme Court said, arm's length accounting transfer pricing is subject to manipulation, it's also subject to good faith disagreement. We've had two distinguished economists here coming up with very different numbers and it's gonna be very difficult to administer that in a consistent means, a consistent method in the long-haul or the short-haul, so the most important policy consideration for the state side is, is consistent administration so that you do have fairness, which mean big taxpayers and little taxpayers -- in, in-state taxpayers and out-of-state taxpayers, and that again is, is the central purpose of the Multistate Tax Commission and it's in our Compact, is to

ensure fairness to avoid double taxation. So combined filing more accurately reflects that, and I do think it's important to point out as the U.S. Supreme Court did in 1994, that in combined filing you are not taxing those out-of-state companies, you're using the unitary tax base to more fairly reflect the income generated within the state of the only taxpayer -- or taxpayers who are subject to your state's jurisdiction. So you're not literally taxing TSC of, of Texas for instance in this situation, you are using a diff- -- a formulary apportionment system to more accurately reflect the income of it. So ease of administration, predictability of results and, and -- are, are the main factors that go into why states would want to use formulary apportionment, i.e., combined filing in this situation, why they would want to use formulary apportionment to reflect -- to more fairly reflect the income generated within the state.

Q: Is -- does ease and -- I guess, you said ease of administration and efficiency also weigh in favor of -- is that also a tax policy consideration for the taxpayer?

A: Of course.
Q: In your experience, have you ever analyzed whether an alternative apportionment method is reasonable or consistent with good tax policy?
A: Yes, it's something that the Multistate Tax Commission -- that's been one of our missions is to, is to encourage states to use their alternative apportionment in a judicious manner and there are various standards set out for when it would be appropriate and when it's not. One of those standards is, is referenced in your 15-5 but it, it derives from a case out of Oregon in the, in the 1980's called *20th Century Fox v. Oregon*. The MTC filed an amicus brief in that case. I wasn't on that brief, but we filed an amicus brief in 1985. We identified to the Court and the Court agreed, three sort of basic principles. The first is it has to be internally consistent. If every state did it, it wouldn't be more than 100 percent taxation. The second is, it has to be, it has to be fair and reasonable. Now that, that has really given over to the discretion of the Agency for them to look at, so there might be situations where you could come up with a

better formula, but it would be very difficult to, to implement that. For instance, you know, disputes over whether one particular function was one place or another. And the third is external consistency. You have to have a real sense that the, the underlying formula at the end, the one you use, reflects in a real way the taxpayer's business presence if you will, and business income within the state. And the -- this -- I should've said the second one also includes maintaining consistency where there is consistency, so in that case, Your Honor, it involved the question of whether the property factor should include the value for a movie company back in the days when they would have reels of film sent by UPS to a movie house, whether the property factor should include the value of those reels of film as a rental, you know, how much it's gonna generate in income, or should it just include the value of the plastic, but you construe UDITPA as saying it's just the value of the plastic. The Supreme Court looked at that and saw that California already had a regulation saying that the property factor in that situation includes the

intangible value, if you will, of the film itself, so the Court said because there's a -- not gonna be a lack of consistency, no other state has ruled on this, California does have a rule, they said it was proper there to use alternative apportionment. So the *20th Century Fox* case has, has been a touchstone for the Multistate Tax Commission, it's what we use in our briefs as one of the main factors. Another factor we use is that, is that the, the factors that are there shouldn't -- should reflect economic activity, and if it doesn't reflect econo- -- economic activity at all or improperly, that's a trigger, if you will. So in the *Voda Phone* case that we filed an amicus in, the sales factor normally would've sourced sales of intangibles to a particular state, but one state with the greatest cost performance, and Tennessee looked at the. The Tennessee Supreme Court said well, you have all of these contracts for cell phone use in Tennessee and not a single dime of money from those contracts is coming to Tennessee, it's all being apportioned to the switching station in New Jersey, and the Tennessee Supreme Court said

that's a situation where the standard alternative apportionment formula has broken down. That would be an appropriate use of alternative apportionment where a factor fails to achieve the goal which was set out for it, in that case reflecting the value of the marketplace. Voda Phone had millions of customers in Tennessee, they were all paying a monthly bill, and yet none of it appeared in the sales factor, so the Court said that would be an appropriate factor. So we look at has the factor captured the economic activity it was supposed to, is it going to be administrable, is it internally consistent, if every state did it how would that work, is it externally consistent, does it reflect at the end of the day the real economic position of that taxpayer within the state, and finally, is it gonna lead to uniformity or lead to a loss of uniformity?

Q: All right. Let me ask you one more question on this topic and then we'll start to wind this up. But assuming a state would have a standard filing apportionment method, from a policy perspective, why would that state allow the use

of an alternative method of apportionment?

OBJECTION:

MR. VON LEHE: Your Honor, two things here if I may object. Number one, he's getting into South Carolina because the testimony here the entire week has been that we, we have a separate -- we are a, we are a, a single state not a combination state, so it's getting into why our method cannot properly reflect income, so I object to that because it is a legal conclusion as it is -- not only that this is a primary legal conclusion before the Court. Secondly, and I'm a little late on this but I was in hopes to be able to avoid it, all of these discussions of cases, these are legal opinions which he is giving, and so the -- I would just kind of condense this. He's getting legal opinions, now he's getting legal opinions as they apply to South Carolina, so we object to it and we ask that it be stricken from the record.

THE COURT: What do you ask?

MR. VON LEHE: Not answered, first ---

THE COURT: Yes.

MR. VON LEHE: --- because I think I got the

objection in there ---

THE COURT: Yeah.

MR. VON LEHE: --- in time as to ---

THE COURT: Yeah, but -- all right. That's fine.

MR. LUTHER: Your Honor, I don't think it's a legal conclusion 'cause I didn't ask him about the South Carolina law, I limited it to tax policy.

THE COURT: Let me start -- yesterday when you transitioned back to 404, I think -- or 403, and I started with 703, 'cause you referenced *Vortex.*

MR. LUTHER: Correct.

THE COURT: And *Vortex* really, if you look at it, it's simply an adoption of 703, because 703 says scientific tec- -- technical or otherwise special knowledge will assist the trier of fact to determine a fact, an issue or understand the evidence, so that's pretty well what *Vortex* did, it adopted that -- you know, assists the trier of fact to understand the evidence or determine the fact in issue. So how does this fit within that standard?

MR. LUTHER: I think the issue that it's gonna help the Court understand is exactly what Mr. Von Lehe just said, which is there has been a lot

of testimony that South Carolina is a separate entity state by default. And so the question I asked was, from a policy perspective if you have a standard formula, why would you suggest that there -- why -- what would be good -- the good policy reasons for having an alternative to that standard.

MR. VON LEHE: Your Honor, may I have one?

THE COURT: Yeah, hold on one second.

MR. VON LEHE: All right.

THE COURT: Hold on one moment.

MR. VON LEHE: So if we are not a separate entity state by default, you know, we take strong objection to that statement. We are a separate entity state because that is what our legislature enacted and we are a separate entity state, there's no by default in it, that's what we are. They're talking about the alternative to it, which in fact, is by default, but we are not a separate entity state by default. I realize this is ---

THE COURT: And I think that's a little manner of semantics, but.

MR. VON LEHE: Perhaps, but it is important to us so I wanted to make that point with Your Honor.

THE COURT: Okay.

MR. LUTHER: I can clarify. What I meant was that separate entity is the standard method.

THE COURT: Okay. I'm gonna overrule his objection, but I will -- his objection included an aspect that I do agree with, and that is going into these specific cases, I mean at that point you're moving into discussing the law in a, in a back-door fashion, and unless you want to explain that to me, I would -- and I would just instruct ---

MR. LUTHER: No, I ---

THE COURT: --- you that let's just avoid references to case law, all right? So Mr. Von Lehe, you do win on that one.

MR. VON LEHE: Thank you, Your Honor.

THE COURT: All right.

Q: Okay. Mr. Fort, and you, you heard His Honor. If we can -- we're not talking ---

A: Que- ---

Q: --- cases here today, we're talking about general tax policy considerations, so I'll Respondent's Exhibit-ask the question. If a state, from a tax poli- -- policy perspective if you have a standard apportionment method,

what would be the policy considerations for or against having an alternative stan- -- a standard or method?

A: Well, there are, there are two policy considerations, one has said there are gonna be cases where the standard formula does not serve to fairly capture income, which again, it's the Uniform Division of Income for Tax Purposes Act, it's not the uniform apportionment formula act, it does have a purpose. And so the one thing is, you, you can have situations where the formula was simply not designed for the industry, particularly this formula, as Professor Hellerstein has suggested, was designed for the industries of the 1950's if you will. It doesn't have -- it is designed to work well there. The MTC has come up with six different special industry regulations over the years, model regulations that many states have adopted where the formula simply wouldn't be fair, and you have situ- -- and the second thing you need, this is as a relief of -- for Constitutional distortions of income, and that's -- recognized Professor Pierce, and third, you need this to prevent, I will say,

more deliberate attempts to, to use the formula to unfairly reflect in-state income. And so, there's three things, one is just, it doesn't fit this system at all. And one is, it's a new industry, something you -- had not been contemplated by UDITPA. And a third, really, is attempts at manipulating the system, which there are many, many situations where that has occurred, for all those reasons. And I think I read somewhere that every apportionment formula across -- not just in tax, but across many, many different fields, has a -- has some sort of a safety relief valve in it, that, that it's just a -- where you have a -- any kind of a formulary apportionment system you will tend to have some sort of a, of a relief valve, as well.

Q: Okay. And again, keeping in mind, I'm not asking you to talk about the specific cases or -- yeah, specific cases, but you just used the term distortion. Is there a general definition within state tax policy of what constitutes distortion?

A: Yes, there is. It's a normative rule that you want to align income with expenses. This is a

basic normative rule of income taxation, and so where you have a situation where the income is not aligned across geographic borders or across -- in this case, or in some cases it would be across divisional borders or, or between corporate entity borders where you have a misalignment of income and expenses, that is a situation where, from a policy standpoint, you want to take a look at fixing that to make sure that that income and expenses are aligned according to the activities undertaken. So the apportionment formula should, in theory, equate to the expenses side of that, of that column. So if you have a lot of income and very little expenses, that's a situation where formulary apportionment might, might be appropriate, and that is a tax policy matter that the States have pursued through various mechanisms. In my 32 years of doing this, that's one of the, that's one of the normative principles the states do try to pursue to fix, to make sure that income is aligned with expenses and it can come up in a variety of contexts. It certainly comes up in the federal context as well. So that's kind of the basic rule is, you want to

see income and expenses aligned.

Q: Okay. With that in mind, are there -- is there any evidence or testimony that you can point to that you've observed this week that you think would constitute distortion under the general tax policy definition you just provided.

OBJECTION:

MR. VON LEHE: Your Honor, I'd like to get in my objection in a, in a timely matter on this now. He's bringing it down to this particular case for you alleging distortion, but I'm certain he's going to allege some of these other principles that he's mentioned. That's up to you, Your Honor, not him. This is not, this is not for an expert to come in here on tax policy ---

THE COURT: Well ---

MR. VON LEHE: --- and te- ---

THE COURT: How about the rule in -- under the Rules of Evidence that an expert can testify about the ultimate issue?

MR. VON LEHE: Yes, well, I think -- I -- not if it's ba- -- not if it's based on legal grounds which is what he's done.

THE COURT: Okay.

MR. VON LEHE: I mean, he's basically saying look, the Department of Revenue is right and the taxpayer's wrong. That's basically what he's saying. That's fine, that's his opinion. That's fine. But it's not for this Court to hear.

THE COURT: Okay.

MR. LUTHER: Your Honor, in terms of me asking him an opinion that's related to the specifics -- facts of this case, that's exactly what I'm doing. And the reason, again, this is just like my question about unitary business earlier, that distortion, which is a concept that has been discussed extensively this week, he's provided a definition from a tax policy perspective and he's now gonna -- and I've asked him to provide some specific facts that would match up with what he understands the term to mean. That isn't -- that is a testimony that embraces an ultimate issue. The question that you'll have to decide is, does distortion at all part of the analysis in applying the statute to this case. I think his definition from a tax policy -- or his testimony from a tax policy perspective will

assist you in making that ultimate determination, but I'm not asking him to apply the law to these facts.

MR. VON LEHE: Your Honor, if I may?

THE COURT: Yes, sir.

MR. VON LEHE: Now we get into this is the reason why his testimony should not be allowed, because he is commenting on what is before the Court, you're the trier of fact here, as well as law, not him. Now, I'm gonna say this, perhaps we remember this thing differently. I remember no testimony about distortion. I don't remember hav- -- even hearing it mentioned, maybe it was.

MR. LUTHER: It was.

MR. VON LEHE: Well, it's within the Court's purview, not mine. I -- maybe, I'm getting a little hard of hearing ---

THE COURT: Yeah.

MR. VON LEHE: --- 'cause I can tell you this, there are many things in this Court's record that we would disagree with the Department about, those are obviously for you to decide, not Mr. Fort.

THE COURT: Are you getting close to the end?

MR. LUTHER: This is my last question.

THE COURT: Well then, I'm gonna step out just for a second -- or not -- well, not for a second, but at least for a couple of minutes.

MR. LUTHER: Okay.

MS. GEER: Your Honor, would it be good for all of us to take a quick bathroom break ---

THE COURT: Okay.

MS. GEER: --- or do you want us to do it later?

THE COURT: Well then, we'll go ahead and take it on the one question. We'll take a break.

(Off the record from 2:15 p.m. until 2:22 p.m.)

THE COURT: Y'all be seated, I'm sorry. I'm thinking about -- well ---

MS. GEER: You usually say it before you even get in the door.

THE COURT: I know, I was thinking about my ruling. (*Laughter.*)

THE COURT: Is -- I think you're getting kind of close, but I do think you can go into this question, 'cause it fits within Rule 703. So I'm gonna let him testify to this. And I -- I'm pretty -- well, gonna -- I think it's gonna be your last question, because I don't think I'm gonna let you go any further.

MR. LUTHER: Fair enough.

THE COURT: So ---

MR. LUTHER: And it is my last question.

THE COURT: All right. So, I respectfully overrule your objection, Mr. Von Lehe.

MR. VON LEHE: Understood.

THE COURT: I certainly thought about it. Just -- I didn't ---

MR. VON LEHE: Well, Your Honor, I'm certain of that. And it's not a huge blow, because we know this is within your hands and not his ---

THE COURT: Yeah.

MR. VON LEHE: --- and so.

THE COURT: Yeah, I don't think -- I'm pretty well decided based on how I see it, so.

MR. VON LEHE: All right.

THE COURT: All right.

MR. VON LEHE: Thank you, Your Honor.

MR. LUTHER: Thank you, Your Honor.

Q: Mr. Fort, do you need me to repeat the question or do you ---

A: I do.

Q: --- remember? Okay.

THE COURT: A lot of people have gotten in trouble saying, I do, but.

(*Laughter.*)

THE COURT: Maybe, in this case it'll work out.

(*Laughter.*)

A: It worked out the first time.

Q: I believe my question was something along the lines of, can you identify any testimony or evidence, facts that you have heard this week that you believe would illustrate distortion using the definition that you provided earlier within the tax policy world?

A: Yes, I can. Again, the definition from within the tax policy world is based upon the concept of -- a normative concept, if you will, of income should be aligned with expenses across jurisdictional, across divisional lines, and I've heard testimony this week that income generated -- the income reported by Tractor Supply Company of Texas was disproportionate to their, to their expenses. And, in particular, we've heard testimony that there was $16,000,000 of payroll that generated $500,000,000 of, of income, at the same time, we have, we have Tractor Supply of Michigan engaged in ---

THE COURT: I hate to stop you at this point. But my struggle is, his answer is based on opinions

to help him reach the determination. And when I say, that evidence that would help determine a fact in issue, I guess, his opinions are evidence, but it does give me struggle. So could you respond to that?

Right now, you're winning.

MS. GEER: (To Mr. Von Lehe) You're winning. So, sit down.

(*Laughter*.)

MR. LUTHER: Your Honor, I would just quote -- I would quote to you from the *Vortex* case where it says, speaking of Professor Freeman, he was qualified as an expert and thus was allowed to testify as to his opinion relating to those facts.

THE COURT: Well, see he's giving an opinion ---

MR. LUTHER: Yeah.

THE COURT: --- but he's giving an opinion that incorporates other opinions, and that's, that's what I was getting at. It certainly gives me pause to think about this.

MR. LUTHER: Yeah. I -- just to make sure I'm clear, are you -- I assume, the other opinion you're talking about are the numbers ---

THE COURT: Yeah, he said they ---

MR. LUTHER: --- the expenses?

THE COURT: Someone gave an opinion as to something, I forgot it, I'm not sure exactly.

MR. LUTHER: I'm, I'm happy to clarify that, because I think the ---

THE COURT: Well, that's just -- I'll tell you what. I'm gonna strike your answer. But ask it again and start all over.

MR. LUTHER: Okay.

THE COURT: Everybody now knows my concerns, so let's just hear it, you know, again.

Q: So, Mr. Fort, to the extent -- I, I want you to limit your answer to specific facts, not opinion testimony, but facts that you've heard or documents that you've seen put into evidence. And so my question again is, have you -- can you identify any specific facts that you believe constitute distortion under the general tax policy principles you described?

MR. VON LEHE: Your Honor, may I?

THE COURT: Yes, sir.

MR. VON LEHE: May I, before he answers? I would have less objection, let's put it like this, if he said do you hear a statement or alleged facts. I mean, there's been a lot of

conflicting factual testimony given here this last five days, and I don't know which of these facts he's going to think ---

THE COURT: Right.

MR. VON LEHE: --- are, are the -- are, are correct ---

THE COURT: Yeah.

MR. VON LEHE: --- or wrong.

THE COURT: I think in this instance, if it was a jury, I would see your argument about it. In my -- given that I'm a judge, I think I'm able to discern the difference.

MR. VON LEHE: Yes.

THE COURT: So I'm gonna allow him to proceed with that, recognizing that I'm gonna evaluate the answer, and may or may not find it useful given my evidentiary viewpoint of the answer down the road, all right?

MR. VON LEHE: Thank you, Your Honor.

A: Well, I, I would -- may I ask -- answer it, Your Honor?

THE COURT: Yeah.

A: Okay. I would answer two things. First of all, I, I think that the Exhibit showing that the consolidation spreadsheets for the Taxpayer

for the three years at issue show that, that Tractor Supply Company makes a much higher return on -- Tractor Supply of Texas makes a much higher return on investment, return -- however you want to define it, but there are objective facts set forth in the consolidated spreadsheet and those show that there is ext-- -- a significant diversion between, between the relative income and expenses of the three entities. So that is some evidence that -- to the extent these entities are unitary, that is some evidence that there may be a distortion of income, if you will, and a violation of the concept of income and expenses should be aligned across a unitary group. So that, that alone is some evidence.

We also did hear much more striking evidence that you can choose to, you know, accept or not accept, that there was an isolated procurement function with approximately 13 million of payroll that, that it was attributable to some -- a large number of 500 million of income, assuming that, that -- I mean, that -- that's -- that was some evidence I heard today, but I think the

objective evidence is very clear, is in the consolidated spreadsheets. So that's one of the things that we as auditors look for when we were are determining is this a situation where we have to dig further. We do look at the relative income and expenses as recorded on a consolidated spreadsheet. In terms of -- I mean, there are -- that's, that's just, sort of, a basic principle of income taxation. So, that leads one to inquire further. And inquires as to whether this is a situation where that income has been artificially shifted, if you will, from one entity to another. And I -- you know, we, we haven't talked about, sort of, the progression of tax -- of corporate income tax shifting strategies through the years, but I think that's one of the things that we look -- we learned there is that, at first it was very obvious, in the *Jeffrey* case here in South Carolina ---

THE COURT: And ---

A: Oh, I said a case.

THE COURT: Yeah.

A: I ---

THE COURT: That's fine.

A: I beg your pardon.

THE COURT: That's fine.

A: Too late. I'm sorry, Your Honor.

THE COURT: Well, you didn't go into it, so, go ahead.

A: Early on the states noticed that there was, what we call a naked assignment of trademarks and trade names to entity isolation companies, and the states responded, including many states in the south ---

MR. VON LEHE: Your Honor, Your Honor?

A: --- by imposing ---

OBJECTION:

MR. VON LEHE: May I -- well, objection. He's drifting off now into an area that is not -- that is irrelevant. He's drifting off into holding companies in other states, this sort of thing. He wasn't asked that question. He's not being responsive to the question he was asked.

MR. LUTHER: I think his answer was -- the question, again, was, what specific evidence has he heard?

THE COURT: Yeah.

MR. LUTHER: And he's now providing some further

explanation as to why the evidence that he's heard is connected to this term of distortion. So it's a ---

THE COURT: Well, there's been evidence about Tractor Supply of Texas holding the trademarks.

MR. VON LEHE: There has been.

THE COURT: And he's -- appears to be commenting about that evidence. And that's -- I think, that's why I'll let him go into this.

MR. VON LEHE: Okay.

THE COURT: But does ---

MR. VON LEHE: I'll just ---

THE COURT: You're ---

MR. VON LEHE: --- stop ---

THE COURT: --- still free to keep objecting, Mr. Von Lehe.

MR. VON LEHE: Well -- and I hate to do this, Your Honor, but I will ---

THE COURT: That's -- yeah.

MR. VON LEHE: But to his ---

THE COURT: No, no, no ---

MR. VON LEHE: But, but I'll ---

THE COURT: I want to make the right determination.

MR. VON LEHE: I know you do, Your Honor. And I -- the thing about it is, he was, he was -- I

envision his testimony as being something like, well, you're foun- -- you're forming a holding company, such as in an infamous case that we all know, you're forming a holding company, it doesn't do anything, you're just -- put some intangibles in it and now you're paying it royalties, taking a deduction and it's not picking up any income and know it. That's what it sounded like to me. Now, if it's in reference to the intangibles in the Texas Company, certainly, it's ---

THE COURT: Well, let me just hear that.

MR. VON LEHE: Yes.

THE COURT: And you don't have to get that comfortable.

MR. VON LEHE: All right.

THE COURT: You can object again if it, if it ---

MR. VON LEHE: All right.

THE COURT: --- veers down the wrong path. All right. Proceed.

A: Thank you very much, Your Honor. I, I guess, I was diverting a little bit. I do think it goes to the question of income and expenses, and yes, there are, there are notor- -- famous cases out there that do talk about that. So as

a tax, tax policy expert, I have advised the states on tax policy when it comes to isolation of income producing assets. And we do that because we are trying to get the income and expenses aligned properly. So, many states have adopted add-back statutes where expenses paid for royalties, for instance, are disallowed ---

THE COURT: Well, you're getting into the -- what statutes states about ---

A: And -- okay.

THE COURT: So let's just stay on ---

A: Okay.

THE COURT: --- the question that was asked.

MR. LUTHER: If I may clarify, Your Honor?

THE COURT: Yeah.

MR. LUTHER: 'Cause I'm not interested in the add-backs, so much, as just wrapping up your answer on the intan- -- the question of intangibles and how that -- is, specifically, is the evidence in this case that you've heard and how that relates to distortion.

A: That isolation of intangibles, whether it's in a holding company or other -- otherwise, can have the effect of distorting the purpose of

the sales factor, which is to reflect the market -- the end contributions of the market, because those intangibles generate income in the marketplace. So to the extent they are isolated, whether in a holding company or elsewise, that is an indicia, an indicator that there may be a misalignment of income and expenses. The states have responded in vari-- various ways to those indicia where the intangibles have been separated out from the remainder of the sale price.

Q: All right. Mr. Fort, those are all the questions I have for you. Thank you.

THE COURT: Mr. Von Lehe?

MR. VON LEHE: Your Honor.

MR. FORT - CROSS-EXAMINATION BY MR. VON LEHE:

Q: Mr. Fort ---

A: Good afternoon.

Q: --- it's good to see you again. Now, we can talk. I believe you testified you worked for the New Mexico Department of Revenue for 16 years?

A: I did.

Q: And I believe you also testified that you've been with the Multistate Tax Commission, which

is abbreviated MTC, for about 15 years ---
A: Yes, I ---
Q: --- since 2007?
A: Yes, correct.
Q: And where's it headquartered?
A: Washington, D.C.
Q: All right. So where is -- where, where do you live?
A: Santa Fe, New Mexico.
Q: And where do you work?
A: Santa Fe, New Mexico.
Q: All right. You're working primarily out of your home, or what?
A: I have a rented office.
Q: You have a what?
A: A rented office, but I ---
Q: A rented ---
A: --- work out of both.
Q: --- office. Very good. Very good. Thank you. And I'm gonna -- this is my understanding, I'm gonna just read quickly what you have done in your illustrious career. You tell me where I'm wrong on this, please.

Your work with the MTC has mainly involved consulting with state attorneys, training state

attorneys and auditors, doing presentations for state auditors, assisting state auditors perform duties, working on amicus -- working on amicus briefs with state attorneys, and assisting state revenue departments through the SITUS, S-I-T-U-S, which I believe you have already described, project. Is this correct?

A: I -- no, Mr. Lehe. I think it's, it's not entirely correct because it doesn't mention my role in the uniformity process, which I think the MTC considers its primary role, which is to develop uniform laws and regulations for the states to consider. And I have spent a considerable amount of my career working on uniformity projects trying to create a balance, if you will, between the taxpayer community and the tax collecting community to try to come up with reasonable solutions to various problems.

Q: All right, sir. And you've also worked with the Utah Tax Commission, I believe?

A: I have -- I do work with the Utah Tax Commission.

Q: Okay. So the bulk of your work over the course of your career has been devoted to working for or with, or in support of state revenue

departments, is that correct?
A: Correct.
Q: All right. Are -- you're not a CPA?
A: I am not.
Q: Okay. You're not an economist?
A: I'm, I'm not.
Q: You're not a transfer pricing expert?
A: I am not a trans- -- federal transfer pricing expert. I think I have a great deal of expertise in state transfer pricing.
Q: And in college, what was your college major?
A: I was a history major.
Q: And do you have an MBA?
A: I do not.
Q: Have you ever participated in the management of a business?
A: I have not.
Q: All right. Have you ever represented or con- -- been a consultant to any private or public business?
A: I've been a lawyer for public business -- for public and private businesses, I don't think I've been a consultant.
Q: And you were a lawyer for what, about six years, I believe, with a law firm, is that

right?
A: Correct.
Q: So you had -- whatever the clients were, that -- that's who you represented?
A: Correct.
Q: Okay. Now, do you agree that separate entity reporting and combined reporting are two different filing methods?
A: Yes.
Q: And do you agree that South Carolina is a separate entity reporting State?
A: Yes.
Q: And do you agree, do you agree that it's important for taxpayers to know and understand which filing method is required in their state when they file their tax return?
A: Absolutely.
Q: You, personally, I believe you said, believe that combined reporting is a better method for states to adopt?
A: Yes.
Q: You advocate for states to adopt combined reporting, is that correct?
A: In a limited way. I don't think it's -- the MTC does not do too much lobbying work, you

could say, but I -- the four or five times I can remember appearing in front of legislative committees, certainly, suggesting combined reporting would be appropriate, yes.

Q: And is that one of the purposes for which you are here, to advocate for combined reporting?

A: No, I don't think so. I'm here to discuss the -- some of the policy implications of your statute, which provides that -- where the standard apportionment formula fair -- fails to fairly reflect business presence within a state, that alternatives can be used.

Q: And would you agree with me that this is not a legislative hearing on the question of whether or not South Carolina should become a combination filing State?

A: Absolutely.

Q: This is not a legislative hearing. Your -- you mentioned UDITPA -- you talked about UDITPA at some length and -- is there anything in UDITPA about combined reporting?

A: No.

Q: All right. You've mentioned and stated, I believe earlier, that the MTC is not an -- maybe, I'll use the term open-advocate of

combined reporting? It is not, I believe you said. You are personally, but the MTC is not?

A: I think that if you look at the bulk of the MTC's policy positions and statements, it certainly is in general support of combined reporting. We participated in a study group in Virginia, just last year, about Virginia doing combined reporting, and the MTC was on record in that situation as encouraging Virginia Legislature to consider combined reporting.

Q: Does the MTC have a model statute on combined reporting?

A: We had two model statutes.

Q: And did you help write those?

A: I helped write the second, not the first.

Q: Okay. And they are favorable towards combined reporting?

A: They, they -- I don't think that's accurate. I think they would say that, the two statutes provide, that if you have a combined reporting system, here is how you can implement it.

Q: All right, sir. And you would agree, that the decision of whether or not to adopt separate entity reporting or combined reporting is a decision that should be made by state

legislature, I assume?
A: I do.
Q: And every state's got a right to pick the filing method that it wishes?
A: Absolutely.
Q: All right, sir. Talk about filing methods for a moment. We've discussed them. The two main filing methods, I believe you have agreed, are the separate entity method or the combined method. Those are the two filing methods.
A: Mr. Lehe, I hate to nitpick, but I would say that there's a third, which is the consolidated method. There are two subsets of consolidated, true federal consolidated and, what we call, a nexus consolidated. Those are surprisingly prevalent in the states right now, almost every state that has combined filing has a consolidated. Almost every separate entity state has some sort of a consolidated filing, as well.
Q: And that's a subset of these others?
A: I think it actually, sort of, stands to the side, but it's very similar to combined filing, in effect, at least.
Q: All right. You've talked about -- we talked

about these filings methods, and I think you've also discussed how the base of these filing methods differ, but I'm gonna talk to you for a moment about apportionment methods.

I wanted to ask you about South Carolina's apportionment method. Is it the standard apportionment method -- is it a standard apportionment method for retailers, and it uses only the sales factor?

A: Correct.

Q: Now, is that not favorable, is that not favorable to manu- -- to manufacturers?

A: It is, it is favorable to in-state manufacturers. It's, maybe, less favorable to out-of-state manufacturers.

Q: All right. But it's not favorable to retailers, is it, a single sales factor?

A: In my experience looking at returns and doing this for the last 32 years, I would say that the property, payroll and sales factors of retailers within a state tend to be very equal. In other words, it is -- it's neither favorable nor unfavorable.

Q: And I believe you said a few minutes ago, but I'd like to ask you a little more about it,

that the -- that you're aware that South Carolina Commerce Department touts the use of single-stack -- single factor sales. Did you say you were aware of that?

OBJECTION:

MR. LUTHER: Objection, Your Honor. I don't think he said that at all. I don't think he was asked ---

MR. VON LEHE: All right.

Q: Well, let me ask you ---

MR. LUTHER: --- or testified about it.

Q: Are you aware of it?

A: I heard Professor Pomp mention that yesterday, so.

Q: You heard him mention it, but otherwise, have you ever looked at the website?

A: I have not, Your Honor -- I -- Your Honor. I have not, Mr. Lehe.

Q: You have not looked at the website, the Commerce website?

A: No.

Q: Okay. You heard Professor Pomp's testimony, and that's all -- and so far, that's the only knowledge you have of it?

A: Correct.

Q: And you don't necessarily believe that it's favorable to manufacturers?

A: It's favorable to in-state ---

OBJECTION:

MR. LUTHER: Your Honor ---

A: --- manufacturers.

MR. LUTHER: --- objection. I -- if I understand the question, he's asking if the website is favorable to manufacturers?

MR. VON LEHE: No, I'm asking if the use of the single factor sales ---

MR. LUTHER: Okay.

MR. VON LEHE: --- apportionment ratio is favorable.

Q: And I believe you've answered the question.

THE COURT: Yeah, he's already -- do you wish to explain that again?

A: No, Your Honor. Just clarify, that single sales factor is favorable to manufacturers with more manufacturing in-state than out-of-state.

Q: Now, with regard to this Taxpayer's Tax Returns, you were here, you heard all of this. Are you aware that this Taxpayer reported income in all three of the audit years?

A: Yes.

Q: And with regard to state tax policy, would you

be in agreement with me that it's good state tax policy to admini- -- state tax statutes in a predictable and consistent manner?

A: I am not sure what that means. Could you ---

Q: Is it good, is it good tax policy to administer tax statutes in a predictable and consistent manner?

A: Yes.

Q: I thought you would agree with that.

A: I misheard you, I'm sorry.

Q: All right. Do you agree that providing notice to taxpayers of how certain situations will be handled is very important, and it's a very important component of state tax administration?

A: Yes.

Q: Taxpayers should be on notice as to what their obligations are, is that right?

A: Yes.

Q: And would South Carolina be known, publically, like in publications or any type of tax investigation that anybody wanted to do, would South Carolina be known as a, as a separate return State -- separate entity return State?

A: Mr. Lehe, I think that depends on how deep you

dig down into the various reporting programs. They would initially -- they would -- I -- to my knowledge, they would initially say South Carolina's a separate entity State, but then they would have further discussion.

Q: All right, sir. And what would their first -- further discussion entail?

A: Well, a good reporting system would certainly mention the *Media General* case and it would certainly mention 15-5.

Q: So then, there could be exceptions to the general rule, in other words?

A: Right. And a good reporting system would point that out.

Q: Now, would you agree that, from a tax policy objective, that tax -- good tax policy is furthered when the Alternate Apportionment Statute, which you know is 18, when the Alternate Apportionment Statute is applied judiciously or sparingly?

A: I think the, the Commission is on record, and I agree, that there are situations where -- that -- I -- first of all, I agree with Professor Pomp. The rules shouldn't -- the exception shouldn't swallow the rule. I think

that judiciously is a very loaded word. We are on record of saying, when the MTC feels it's appropriate to apply alternative apportionment. And one of the projects I worked on in 2010 was to come up with a new model regulation for the MTC -- for the states to consider that broadened the application of alternative apportionment, in particular, directed to what we consider to be income-shifting activities.

Q: Thank you. Now, courts and the commentators alike, they have suggested that alternative apportionment be used sparingly for the reasons that I have given, so that a taxpayer would be placed on notice, is that correct?

OBJECTION:

MR. LUTHER: Your Honor, I'm gonna object.

Q: Do you know that?

MR. LUTHER: I'm gonna object because he's asking to say what the courts have said, which I think he objected to earlier.

MR. VON LEHE: Take your word courts out. I'll just say commentators.

Q: Are you aware that commentators -- respected commentators have suggested that alternative apportionment should be used sparingly?

A: I don't know if that word is used, but they -- but many commentators have sug- -- have -- Profe- -- well, Professor Hellerstein, for instance, has 40 pages in his textbook devoted to when alternative apportionment is appropriate and when it's not. I wouldn't want to su- -- I wouldn't want to sum that up in a single word. But in -- but I do agree with you that, that many commentators have cited the work of -- cited the comments of Professor Pierce who said it should be used sparingly, if you will. They don't cite the comments to the -- the actual, official, comments to the UCC for some reas- -- excuse me, to the UDITPA for some reason, which have something very different. It says it should be used broadly where justice demands it, consistent with the principle of fair allocation and representation of business presence.

So the official comments, in fact, make it clear that it should be used broadly. And that's why six times in those comments they reference Section 18 as an appropriate thing. But many commentators and courts would agree with you, that it's -- that some -- sparingly

might be the right word. The MTC has settled on, and in limited and specific circumstances. So we feel that guidance where it produces incongruous results -- so we feel that guidance is the best we could come up with for when it could be used. So, I'd prefer to just, if I may, stick with the MTC language, which was in limited and specific circumstances, which would ordinar- -- otherwise produce incongruous results.

Q: And that is, of course, your, your prerogative. Now, here's something that perhaps you and I would agree with. In any case, this alt- -- these alternate statutes that can be any -- but these alternate statutes, they're only to be applied when the standard formula does not fairly represent the extent of the taxpayer's business activity in the state ---

A: Correct.

Q: Is that correct? I mean, is that a fair reading of Section 18?

A: It is a fair reading of that Section. But in (A)(4) of your Statute it goes on to say, or any other method which results in a fair reflection of income -- fair division of

income. So it's not just the apportionment formula itself, but they -- but (A)(4) does reference a fair apportionment of income.

Q: But you don't go to the alternate factors until you first determine that the standard formula doesn't fairly represent the extent of the taxpayer's business activities in the state, right?

A: Correct.

Q: Okay. And would you also agree that the standard apportionment formula is intended to work for most taxpayers?

A: The standard -- I would assume, the legislature would've intended that. The standard formula does certainly work well for a -- many, many taxpayers. It doesn't wor- -- doesn't work well for the financial institutions, for instance. So I don't, I don't know about many, but ---

Q: Well -- I mean, I want to give you plenty of time to answer, but a taxpayer, a taxpayer can't even file a tax return under combination in this State without getting permission, can they? I mean, you can't even file that return.

OBJECTION:

MR. LUTHER: Your Honor, I think he's asking him to opine on the laws of ---

MR. VON LEHE: If he knows.

MR. LUTHER: --- the laws of the State.

THE COURT: He's commenting, not only, about state law so far, but now we're getting into how y'all administer the taxes. I mean, you're opening some doors here.

MR. VON LEHE: Well, all I'm saying is this, Your Honor, that this is in the statute, it -- basically, I'm just asking him a question, does- -- doesn't it say that you don't get to file combination unless you get permission from the state. 18 says exactly the same.

THE COURT: You're asking him about the statute? If you want him to interpret that, and you don't object. But I -- as far as what the Department may take a position, I'm not sure if he can comment on that. Your -- if he -- I'll let him go if he knows to his own knowledge.

MR. VON LEHE: Well, I wondered -- would you stipulate to that, that the taxpayer ---

MR. LUTHER: I think ---

MR. VON LEHE: --- in order to file a combined return's got to get permission first?

MR. LUTHER: I think the statute speaks for itself.

THE COURT: Yeah.

MR. VON LEHE: I mean, and we'll stipulate to that. All right. Very well, very well.

THE COURT: Yeah. If you want to comment about what the statute says and he doesn't object to that I ---

MR. LUTHER: Your Honor, I do object, 'cause I think ---

THE COURT: Okay.

MR. LUTHER: --- A; we're trying to streamline this, and we're trying to keep him in the lane that you asked him to earlier, which is, let's not opine South Carolina Statues.

THE COURT: I know. I'm just saying.

MR. LUTHER: Well, to -- so to the extent that his question asks him to opine on the statute, I'm gonna object.

THE COURT: Okay.

MR. VON LEHE: Now ---

THE COURT: You were gonna make all of my previous rulings favorable or, at least, covered by the law by not letting him testify about the stat-- (laughter) ---

MR. VON LEHE: Perhaps it's not too late, Your

Honor.

(*Laughter*.)

THE COURT: Okay. I sustain the objection.

Q: All right. How would -- you talked about -- a little -- well, I'll say, you talked about the single factor sales factor, the sin- -- the single factor sales apportionment method, right?

A: Yes.

Q: You talked about that a little while ago. And I believe, you said, in your deposition, and I just want to mention this, but I'd like to hear what you say today, which I'm sure will be consistent. You said that it is an appropriate measure of a taxpayer's business activities in a state -- I think you said that, it was -- you used the term -- you were asked with regard to retailers, I think you used the term consumer-facing industries?

A: Correct.

Q: And does that include a retailer, a consumer-facing industry?

A: Ye- -- I -- yes. I actually had in mind service providers that depend on the market primarily for their activity and so they don't

have property and payroll, that a rental company that uses independent contractors I would've -- you know, I -- a service company, I would define that as consumer-facing. But, in general, Mr. Lehe, I think you're trying to ask, does single sales factor work for most retailers, and I think the answer is yes.

Q: And I believe you already said that's what was used here, and of course everyone in the courtroom knows that.

Now, with regard to transfer pricing, once a state used -- once a state decides to use separate reporting as its method, it -- necessarily, therefore, has to have transfer prices -- it has to have the price between parent and subsidiary companies, does it not? If it's a separate rep- -- if it's a separate reporting state, doesn't it have to have -- have to know the correct price between it's various entities?

A: Yes. It doesn't have to be based on transfer pricing, it could be based ---

Q: But it needs to be right, does it ---

THE COURT: Hold up. Let him finish answering.

A: Okay.

MR. VON LEHE: Oh, I'm sorry.

A: All right. It doesn't necessarily have to be based on transfer pricing, there are other methods to determine the in-state and out-of-state. So, in fact, a 1976 Law Review article, the Harvard Law Review talks about formulary apportionment is not inconsistent with transfer pricing in the federal system. I would think the same would hold true for the state system.

Q: All right, sir. And would you, would you agree that the states that have chosen separate entity reporting as their filing method have made a determination to use arm's length pricing of some kind?

A: No, I don't agree with that. I think they have not ma- -- necessarily, made a determination one way or the other. That's, that's a pretty loaded question. Again, it comes down to -- it comes down to whether they are, are -- to what extent they're willing to rely on that -- there are other factors at issue, they've, they've chosen to reference one -- 163 of the Code and disallow lack of ordinary expenses. There's a whole alloquy of, of possibilities there. But I think you're suggesting that there's an

assumption that, that arm's length accounting will handle inter- -- mult- -- multistate, multi-forum entities.

Q: And you do not believe that it will, is that what you're saying?

A: No, I believe that -- that that's assumption that's, sort of, baked into the statute, but that's not necessarily what is, is called for under alternative apportionment.

Q: All right, sir. I understand. Thank you. Now, what if -- you're, you're here as an expert, so I'll give you a hypothetical question along the lines that, that you just testified to, but -- okay. If an economist that you trusted and you knew was going to give you the correct answer on the transfer price between two entities, let's make that assumption. There's gonna be any question about this. Somehow, this is something that is a given, it is known, it is a constant. If you get from that economist a number to be applied in a transfer price, then would you agree, that the sepe- -- that separate entity filing can accurately show the extent of the taxpayer's business activities in this state?

A: Well, if I may, since this is a hypothetical, could I ask, is this between two unitary corporations?

Q: Yes. And these companies would be unitary. Thank you for that.

A: Okay. The arm's length accounting may get you there, it, it may not. One of the principles of formulary apportionment and the Unitary Business Principle is that, that transfer price cannot be accurately determined any other way except through formulary apportionment. And I would reference the writings of Charles McLure at the Hoover Institute who has written extensively on that saying that, it -- as a matt- -- as an economic matter, you cannot determine a transfer price between two unitary corporations.

Q: Sir, let ---

THE COURT: I'm just curious. You said -- is this a -- would this be a unitary corporation? If you've got two -- if you got corporations that aren't unitary, would there ever be a need for income transfer pricing to -- evaluation? I mean, they're separate corporations.

A: Right.

THE COURT: No?

A: It ---

THE COURT: I would think, that it would be a presumption of arm's length is what I'm getting at. But, maybe, I'm missing something.

A: Oh, I think they're -- I think, if they're non-unitary there is a presumption of arm's length, but §482, Your Honor, is premised on the idea that two commonly controlled corporations ---

THE COURT: Oh, okay. Could be common.

A: --- can, can follow the tax code and still result in a misstatement of income. So under §482 you do not need to show sham transaction, you don't need to show anything ---

THE COURT: Right.

A: --- you just need to show it's two commonly controlled corporations that have, have transferred something ---

THE COURT: I get it now.

A: And the Code authorizes the, the Department of Revenue -- or IRS in that case, to reallocate income and expenses between related parties to more fairly reflect the income of the taxpayer.

THE COURT: Okay. All right. That was off the subject here, but I was just curious.

MR. VON LEHE: Thank you.

Q: Now, most corporations doing business in the United States, and this is a question, do business with multiple entities, do they not?

A: Yes.

Q: If they have numbers of subsidiaries?

A: Yes.

Q: So there's nothing unusual about that. In fact, two operating in one single corporate form would be the unusual, is that ---

A: It has become that way, yes. I don't know if it was always that way.

Q: Okay. Well, I'm just talking about during the audit period, which is six -- '14, '15, '16.

THE COURT: Y'all ---

MS. GEER: Oh, sorry ---

MR. VON LEHE: Yes, Your Honor.

MS. WOOTEN: I'm sorry.

MR. VON LEHE: The audit period '14, '15, '16? (Whispering) yes, they said yes. Okay.

Q: I'm just talking about during the audit period, all right? So you would agree during the audit period ---

A: Yes.

Q: --- that would be correct? Now, is it not

also, and based on your knowledge, is it not also you're factual belief, or your general belief, that those subsidiaries are unitary with that parent? Aren't they, in most cases, operating where the unitary principles would show they are unitary?

A: Yes. I think that -- my experience has been that, that commonly controlled -- commonly owned taxpayers with separate entities tend to have unitary relations. There is -- there's certainly reasons that you would want to be unitary and try to get those synergies. And so, yes, in general, but there are other situations, like a conglomerate that has 15 different subsidiaries engaged in 15 different businesses that are ver- -- not unitary.

Q: Well, help me to find a way out on this for a taxpayer, if you will. It's relevant to what we've got in front of us. We've got a uni- -- a unit of -- a group of corporations, maybe, it's just three, maybe it's 20, but it's a group of corporations. They are unitary, okay, they are unitary. Would they -- according to the laws of the particular state in question, they have to file on a separate return basis.

You saw that map up there, there were about 20 of them, weren't there, something like that?

A: Yeah -- I would've thrown Texas in there as a combined filing State now.

Q: Well, throw them in there with -- what have you. But there are a lot of tax -- a lot of taxpayers in that situation, I believe you would agree. Now -- or have agreed.

Now, those states are going to require these taxpayers to file separate returns by their, by their nature, right?

A: Correct.

Q: So they're gonna require that. Now, if they can't do that because of some -- if, in fact, you can't get an accurate transfer price between them, then how can they -- they're stuck aren't they? I mean, they can't file in the, in the state with the separate entity reporting, they can't file the- -- they can't file a combination there because those states require that separate entity reporting?

A: Well, I don't think they're stuck. Again, the -- under the federal system, income, income of consolidated members is separately reported, although, the IRS does not audit those numbers,

they fall within broad categories of generally accepted accounting principles, they -- arm's length accounting principles, and taxpayers know that they can rely on their federal consolidated reports, at least, as a, as a starting point for separate entity states, and it's up to states to look at that and challenge in appropriate situations. But, certainly, taxpayers do rely on arm's length accounting, as reported in our federal consolidated schedules, to report their income and expenses.

Q: All right, sir. And I believe you said today and, and in your deposition that, being part of a unitary business is not automatic proof that the standard method cannot fairly represent a taxpayer's business activity in a state, is ---

A: Yes.

Q: --- that a correct statement?

A: Yes.

Q: So you agree with that statement?

A: Yes.

Q: All right. And would you agree that there are many situations in which separate reporting can fairly represent the, the unitary business activity in a state -- a taxpayer's business

activity in the state?

OBJECTION:

MR. LUTHER: Your Honor, I'm gonna object. I think he's reading in the statute and asking him for a legal conclusion.

THE COURT: Any response?

MR. VON LEHE: Yeah. I mean, I -- if it -- it is the language in the Statute, but I'm asking him for his opinion as to whether or not this could, this could be an accurate reflection of income. It's not as far gone as -- and -- but -- I'm not up here to try to get him to try my case for me or to say, yes, you're right or yes, your -- yes, your, your position's right or yes, your position's wrong.

THE COURT: Can you ask that question one more time, so I can just hear it ---

MR. VON LEHE: Yes.

THE COURT: Hear it closely?

MR. VON LEHE: Yes.

Q: That -- you agree that an in- -- an inac- -- excuse me, that being a part of a unitary business is not automatic proof that the standard method cannot fairly represent a taxpayer's business activity in the state,

correct? And I believe he said yes.

THE COURT: I mean ---

MR. LUTHER: I think that was the ---

MS. WOOTEN: That was not his question.

MR. LUTHER: --- prior question.

THE COURT: Yeah, I think ...

MR. VON LEHE: Well, do you agree that an inaccurate transfer pricing study, I would add, up or down, is not automatic proof that the standard method does not fairly represent a taxpayer's business activity in the state?

MR. LUTHER: I think that's a different question, so -- and I'm gonna ---

THE COURT: Okay. Go ahead.

MR. VON LEHE: It's all right? I'm relieved.

(Laughter.)

A: Let me -- should I, should I answer that question?

Q: No, don't answer ---

A: Okay.

Q: --- that.

THE COURT: Okay.

(Laughter.)

Q: Business structure -- some of this we've already covered. Just a moment, please.

In the early part of your testimony today you talked about the sales factor being added. And I think, maybe, we -- may be around -- I won't -- you would know the date. I can't remember when it was now or what I wrote down I can't read it. But, you said something to the effect, that the sales factor was, was added to add value to the apportionment method. And when you said that in the early days it didn't have a sales factor in it, and that that was added?

A: Mr. Lehe, I -- my understanding of the history -- and it's derived from Professor Hellerstein's textbook mostly, but I also have read the Willis Committee, is that states had a wide number of apportionment systems -- states generally filed apportionment formulas, but they had a wide number of systems as it -- in the Willis Committee, some economists argued that there should only be a property and payroll factor, 'cause those were seen as the traditional means of generating wealth, and the states testified in front of the Committee that sales factor was critical. And so, I don't know how many states then had the sales factor.

It was called the Massachusetts Method, the three factors. I don't know how many states had them -- had the sales factor leading up to that, but soon after that, virtually, every state adopted the three-factor formula, you know, equally weighted property, payroll, and sales.

Q: All right, sir. And -- so you feel that the -- or, do you feel that the sales factor does -- is important in making the determination of a taxpayer's -- of a formula reflecting a taxpayer's business activities in the state?

A: Absolutely.

Q: Is it one of these that might be the more important, property, payroll, sales, one of those, one of those three?

A: It ---

Q: If you had to pick one, and -- you don't have to, but if you did, which one would you?

A: I -- it, it absolutely depends on the industry. There are industries that are -- that have virtually no property and payroll, and use all sub-contracted work. In that situation, the sales factor would be, by far, the best. There are other industries that have lots of property

and payroll, and in that situation, the sales factor takes on relatively less weight. Many legislatures have made a legislative decision that the best way to measure income is sales alone.

Q: And for a retailer, would you agree with that?

A: I think for a retailer that a three-factor formula would be preferable. But, again, in my experience, has been the three factors tend to be fairly equally weighted for a retailer, because they have to have a lot of property and they have to have a lot of payroll in the market state, so the sales, the payroll and the property factor for retailers tends to be relatively the same.

Q: Most of this, I believe, we've already covered.

MR. VON LEHE: If you'll give me just a moment, Your Honor? I'm -- just to make sure ---

THE COURT: That's fine.

MR. VON LEHE: --- I've covered everything.

THE COURT: Although, I was wondering, how many potential sources of questions do you have?

MR. VON LEHE: Well, Your Honor, I ---

THE COURT: And I think that's the third one I've seen.

(*Laughter*.)

MR. VON LEHE: I just have a group of excellent advisers around me, and -- but I am making these my own. I ---

THE COURT: Oh, okay.

MR. VON LEHE: --- will say that.

(*Laughter*.)

Q: You mentioned income isolation earlier in your testimony. I objected to it, of course, but it was allowed. You mentioned income isolation, and -- what if you put a subsidiary in a state that does not have an income tax? Or, what if it has a low rate of tax, is there income isolation there?

A: Not by virtue of that.

Q: Then what if it -- what, what if that tax rate in that other state is higher than the rate in South Carolina?

A: That wouldn't be income isolation either.

Q: That's not a income isolation. You talked about procurement, which of course is one of the key things that's been discussed this week, and how important it is or not important -- just, whatever one wants to take -- whatever view one wants to take. And you said, as I, as

I recall, and you can correct me if -- that procurement -- that if, if someone has -- if procurement is that important to them, why not outsource it? Did you say something along those lines?

A: Mr. Lehe, not exactly. What I said was, one of the, sort of, normative rules of taxation, if you will, one of the things we look at is, if you have a particularly inefficient -- particularly inefficient operation, you know, from the, kind of, the basic economics that we tax people operate on, you would expect that that -- that fewer resources would go into that, sort of, the principle that makes formulary apportionment work. Conversely, if you a particularly valuable activity, that's something that you would expect that taxpayer to then provide for a third party. So that's why in 15-5 the Regulation, it identifies whether you have source -- whether you perform those same services for third parties as one of the indicia that South Carolina will look at to see whether use of formulary apportionment under, under §2230-(A)(4) is appropriate. You're looking at, well, if they've made so

much money on this, on this activity, have they extended that to third parties? And so, that is one of the things that South Carolina has instructed to look at, it's something that we at the MTC would look at. It's something that Professor Pomp yesterday mentioned a particular case, that was sort of the dividing line for that case, and the one that came immediately after it was, are you providing these trademark services to third parties or are you only re-licensing your trademark back to the company involved, in that case it was called *Sims*. Sherwin Williams came along soon after ---

Q: Answ- ---

A: --- they were licensing their trademark ---

Q: --- if I may ---

A: I'm, I'm sorry.

Q: (Inaudible due to multiple speakers) ---

A: I, I beg your pardon.

Q: Yeah ---but it -- yeah, but I think you're -- I think you answered the question.

A: Okay.

Q: But, but I do want to add this as a follow-up question to that. Let's assume that I do have a procurement function in my company, as Texas

believes it does. Let's assume I do have that, and that is a part of high expertise, it's something that works extremely well, why would I want to give that out to a third party? Wouldn't I want to keep those secrets my secrets in how I'm doing this, my way, in other words? Why would I want this, this to go to a third party?

A: I, I actually -- I was suggesting you might want to sell your services to a third party if it was bringing in that much money.

Q: Good suggestion. You mentioned matching income and expenses.

A: Yes.

Q: You mentioned that?

A: Yes.

Q: Well, let me ask you this. Because the cost of goods sold -- are we talking about -- I assume, now a south- -- a tax return, a tax return, not necessarily a South Carolina Tax Return, but a tax return, if one entity, and it could be a part of a combined group -- excuse me, don't use the term combined, it could be a part of a related unitary group, but it is a taxing entity, it sells marketable goods to another

entity in that, in that group, it reflects a proper cost of goods sold markup on it, now, it's been mentioned in this particular case 9.7 percent, but let's just say it's right, forget the number, is it -- is not that cost of goods sold then, is not -- is that not included and matched up in that sale? I mean, it -- we have a matching principle here that when you -- you make a sale that's gross income, look at any financial statement. Gross income is the sales fac- -- gross income's at the top. The next, it's cost of goods sold. And then, we got -- now we have an income after cost of goods sold, but isn't that matching?

MR. LUTHER: Your Honor?

Q: How is that not matching?

OBJECTION:

MR. LUTHER: I'm gonna object. This appears to call for accounting opinion, which Mr. Fort has not been qualified as an accounting expert.

MR. VON LEHE: I think he testified about it, but. Be that, be that as it may, if he knows, he knows. I mean, I'm just wondering, what is this -- where -- where's the problem? Let me put it like this -- maybe, I should do this.

No, I'm not gonna do that. I'll let the question stand where it is.

THE COURT: Can you answer that question without going into accounting principles?

A: I can.

THE COURT: Well then, proceed.

A: Thank you. I was -- I testified earlier and, and mentioned earlier that I was looking at the sales factor relevant to line 28, federal taxable income as reported by the three entities, and there was a significant mismatch between the sales factor -- the amount of sales and the amount of income by the three entities. And under, sort of, unitary principle, under highly unitary companies, under the formu- -- the principles of formulary apportionment, one would expect those three numbers to be relatively the same. I actually did prepare some charts on that, but I -- they have not been introduced in evidence, but I do have a bar chart comparing federal taxable income with the sales factor. And consistently, for the three audit years, Tractor Supply of Texas had far more federal taxable income per unit of sales than the other two entities and,

especially, Tractor Supply Company doing business in South Carolina. That is something that we would look at as evidence that there has been a mismatch -- distortion under generally accepted standards of what constitutes distortion of income for purposes of applying UDITPA Section 18 or your §2230.

THE COURT: And you objected to that?

MR. VON LEHE: Well ---

MR. LUTHER: Just to the last several words.

THE COURT: Go ahead.

Q: Well, I'm not gonna beat, beat this thing to death, but the fact of the matter is, if -- whether that price is right or that price is wrong, it's being -- the -- there's the value being added to the, to the purchase price of that widget which is now going to a parent company -- gonna be sold to a parent company, and it becomes cost of goods sold to that parent company when it sells it, isn't that matching income and expense? I mean, it might be wrong, but it's still a match, isn't it?

A: Mr. Lehe, I -- absolutely, you have -- you still have to dig a lot further than that. It's not enough just to say, these numbers

don't match up. There is, there is a, there is a need for further inquiry and my understanding is that, you know, that's on a case-by-case basis.

Q: All right, sir. And I believe you've been asked about the company forming subsidiaries. I know you were asked in your deposition, but aren't there many reasons why a company would want to form a subsidiary? I think you've already said that most companies in this Country operate through numerous subsidiaries ---

A: Absolut- ---

Q: --- aren't there non-tax reasons why they would want to do this?

A: Absolutely.

Q: All right. Would you consider a limited liability, business management, financial management or purchasing, selling, these are all good business reasons?

A: Yes.

MR. VON LEHE: If you'll give me just a moment, Your Honor.

THE COURT: You about to object to something, Mr. Luther?

MR. LUTHER: Not if there are no more questions.

THE COURT: Okay.

MR. VON LEHE: Well, I do have just one question, which is ---

THE COURT: Oh, okay.

MR. VON LEHE: --- I'll just ---

THE COURT: Well, you're just standing up in advance.

(*Laughter*.)

MR. VON LEHE: Yes. I like to stand, Your Honor.

Q: I do have this one question. I think you mentioned that you are -- maybe, a disciple is too strong of a word, but you're an advocate of the positions of Charles McLure ---

A: I do ---

Q: --- would that be correct?

A: I, I -- you know, I -- no. I think that, I think that he has had a great impact on the profession in his thoughts on that. And so, I don't think I took into his, his theory entirely my own, that it's impossible to pull out a legitimate transfer price between two unitary corporations. I would just say that's, that's a tenant of state taxation, that only formulary apportionment will work where you

have two unitary corporations engaged in a -- in the same business. I, I don't think I would put it quite as strongly as he does. But that is a tenant of formulary apportionment principles that 45 States signed to. I do think that, that it may go a bit far.

Q: Well, as I understand it, and what you've said, I believe, is what I understood you to say earlier, he says it can't be done.

A: Right.

Q: You say under proper circumstances it can be done?

A: I just would be less abs- -- absolute then he is on ---

Q: You're less obsolute ---

A: Less ---

Q: --- absolute?

A: --- absolute.

Q: You're less ---

A: That ---

Q: --- less absolute?

A: Yes.

Q: Okay. Thank you.

A: Thank you.

Q: Thank you.

A: Thank you, sir.

MR. VON LEHE: Your Honor.

MR. LUTHER: Nothing further from the Department.

THE COURT: You may step down.

A: Thank you.

THE COURT: One more witness?

MS. WOOTEN: Yes, Your Honor. Can we take a break --

THE COURT: Yeah.

MS. WOOTEN: --- a restroom break, please? Thank you.

(Off the record from 3:27 p.m. until 3:38 p.m.)

THE COURT: Call your witness.

MS. WOOTEN: Thank you, Your Honor. The Department calls Dr. David DeRamus.

THE COURT: You're still under oath.

DR. DERAMUS: Yes, Your Honor.

THE COURT: Saves us time.

DR. DERAMUS - DIRECT EXAMINATION BY MS. WOOTEN:

Q: Good afternoon, Dr. DeRamus.

A: Good afternoon.

Q: Were you here -- or, have you been here for the testimony in this trial?

A: Yes, I have.

Q: And you've been here all week?

A: I have.
Q: Okay. And did you hear Dr. Andrade's testimony earlier?
A: I did.
Q: Okay. Are there any points in which you and Dr. Andrade appear to agree on transfer pricing issues in this case?
A: Yes, on some issues.
Q: Okay. And what are those?
A: He and I both appear to agree that the PwC 2014 Study is unreliable. We both -- he -- my understanding, he concludes that the comparable profits method that PwC used is not the best method. I conclus- -- similarly, conclude that the -- PWC's application of the CPM is unreliable, and we also both appear to agree that the, the factual basis, or the functional analysis on which PwC relied is incomplete and inaccurate in some significant ways.
MS. WOOTEN: Ms. Buckner, may we have the computer, please?
MS. BUCKNER: Uh-huh.
MS. WOOTEN: Thank you.
Q: I'm gonna show you what's -- what's on the screen is Respondent's Exhibit 33, it is slide

33. Do you see that on the screen?

A: Yes, I do.

MS. WOOTEN: Okay. One housekeeping point. My co-coun- -- or apposing counsel informed me, the -- it says Joint Exhibit 37, that is actually Joint Exhibit 42. So the Bates number ref- -- with reference to TSC is correct, the Joint Exhibit Number is not correct, but Joint Exhibit 42 is admitted in the record so just one point of clarification.

(Respondent's Exhibit Number 33 was referenced at this time.)

Q: Do you recognize the information on Exhibit -- or slide 33?

A: Yes, I do.

Q: And where did you obtain this information?

A: So the reference to the Bates number documents are to spreadsheets that Dr. Andrade produced as part of his file in this matter. So these are calculations that he appears to have summarized based on, kind of, the underlying trial balances. So we reviewed the calculations and the summaries, and we compared them to the figures in the Trial Balances to sati- -- so that I could satisfy myself that

they were a reasonable reflection of the, the income that -- or the operating profits for Texas, with regard to its procurement versus the retail operations.

Q: Okay. Thank you.

MS. WOOTEN: All right. If you'll flip to slide 28, please.

Q: And again, this is the same Exhibit, Respondent's Exhibit 33. We're now looking at slide 28. Do you recognize the information on the screen?

A: Yes, I do.

Q: Okay. And where -- what is the information, and where did you obtain it?

A: So this is information that I similarly obtained from Dr. Andrade's file. I'm not quite sure if the -- I don't have a great memory for all of the Bates numbers, but I -- that's -- I think that was the first place I saw this type of information, where I had the expenses for the procurement function actually spelled out on an annual basis. So, i.e., tying back to that 12. -- effectively, 12.9 million dollar number at the bottom of the right-hand column.

Q: Okay. And do you agree with Dr. Andrade's conclusion regarding what he considers to be an appropriate amount of income consistent with the Arm's Length Standard, allocable to TSCT for it's procurement function?

A: No, not at all. And it -- but I would also note, that in his testimony earlier, I did not hear him explicitly specify the amount of income for the procurement function separate from TSCT's retail operations in Texas. But, regardless, I -- the sum total of his opinions, with regard to that amount, I consider to be unreliable.

Q: And do you consider it reasonable and consistent with the Arm's Length Standard that TSCT should earn between 300 and 350 million dollars annually from its purchasing function when it incurs, approximately, 13 million annually to perform that function?

A: No. That's completely inconsistent with the Arm's Length Standard.

Q: Okay. All right. And do you recall the method Dr. Andrade used to analyze TSCT's procurement function?

A: Yes, I do.

Q: Okay. And what was that?
A: Well, he claimed that it was the -- an application of something called the residual profit split method, which is a, kind of, a defined term or a defined method in the §482 Regulations. There's an entire section of the §482 Regulations that describe how it's to be performed. It's often referred to as the dash 6 Regulations, i.e., §482-6.
Q: Okay. And have you previously applied -- and I'm just gonna refer to it, the RPSM. Have you previously applied the RPSM method in your -- or in your transfer work?
A: In my transfer pricing work, yes. I've applied it many times.
Q: Okay. And does this include matters in which you've served as a testifying expert on behalf of the IRS?
A: Yes.
Q: Okay. And do you consider the RPSM to be a reliable method for determining arm's length pricing in this case?
A: No, not by a long shot.
Q: And can you explain why?
A: Okay. Maybe, it's helpful to first, step back

and think about when the RPSM is applied. It is generally used in situations when you have a related party transaction between two parties, both of whom have very valuable, non-routine intangibles. So, for example, consider a multinational pharmaceutical company that has developed a novel therapy, a new molecule in Europe and it has a U.S. affiliate that's going to market that particular molecule, and it is -- has a manufa- -- let's call -- for the sake of argument, let's call it a manufacturing facility in Europe, so it's going -- it's developed this molecule in Europe, it's manufacturing the pill in Europe, it's shipping the product over to the United States, and it's, and it's U.S. affiliate is using a significant amount of brand awareness, think Pfizer or Merck, companies that sell branded products and -- branded pharmaceutical products that require a substantial investment of, not just, advertising dollars, but also, what's often referred to as detailing, i.e., going around to doctor's offices and convincing them of the therapeutic benefits of the drug. That's a situation when you have what

economists typically think of as significant intangibles on both sides of the transaction. You have, for lack of a -- for shorthand we'll call it an R&D techno- -- R&D intangible, typically, a patented technology that is able to generate substantial returns, as you would expect, for example, in my, in my pharmaceutical example. And you also have substantial brand development activity in the United States. I think one thing people don't generally realize about pharmaceuticals, is the fact that they -- pharmaceutical companies spend a substantial amount of money marketing their products, and oftentimes that -- those budgets are in -- are somewhat commensurate with the amount of money they're spending on R&D. So, you have that situation, and then the question is, when the, when the company is then selling the product in the United States, how are the returns -- should be divvied up between those two partn- -- those two parties. And I agree, to some extent, with Dr. Andrade and where he -- in which he said, the general analytical framework is one of a joint venture-type approach, because you have two parties

coming together with very valuable assets and in that situation, there's an approach specified in the Regulations called the RPSM, and the RPSM, it's actually fairly simple, the concept, it just says, let's identify certain things we want to compensate, so for exam- -- that are, that are easy to benchmark. In the case of my pharmaceutical example, it would be the manufacturing function. And this is a very simple, what I'll call, small mol- -- a small molecule drug, the -- this is almost something you could cook up in a, in a laboratory as opposed to larger bio-pharmaceutical products that are more complicated, that predic- -- particular manufacturing function, there are lots of comparables out there for the -- I go -- sometimes I hesitate to call them routine returns, but they are still benchmarkable returns for that manufacturing function. So I can find comparables, other manufacturers, hopefully, other pharmaceutical manufacturers, I can see their, their returns on the assets they use in that manufacturing activity. And then, out of the total amount of operating profit, I can take off the amount of operating

profit that's allocated, first to the European affiliate for it's manufacturing function, and then I'm left with a pot of money that we refer to as residual profit, and it's residual operating profit. And in that residual operating profit, the analyst has to -- or in some cases, the courts, have to evaluate an appropriate metric for dividing that up. And the Regulations specify certain methods and certain principles for, for doing that amount. Typically, it's based on, at a relative measure of expenditure. So the R&D side spent a billion dollars on -- to develop the drug, the marketing is expected to spend 500 thou- -- or let's call it a billion dollars, as well. And so, then they -- in that situation you'd expect a 50/50 split. In, in practice, the implementation of the RPSM is more complicated because the -- those allocation factors are -- they, as you can imagine, they drive so much of the result that the IRS and the courts look for a fair amount of detailed analysis to develop up that -- the, the allocation factor you're going to do. That typically involves capitalization of expenditures, all kinds of

things I don't, I don't need to get into, but conceptually, it's still a data-driven exercise to figure out what is the most reliable way of divvy- -- of dividing up that pool of residual profits between these two types of parties in the situation when you have these really valuable non-routine intangibles. And, here, I'm really talking about valuable technology branded pat- -- I'm sorry, patented technology, like a drug or a high-tech product, for example, and then a brand -- a valuable consumer brand that we can observe that in the elevated prices the consumers pay for that product versus a generic product that might be sitting right next door.

Q: So, in keeping with talking about intangibles, what is your understanding of Dr. Andrade's conclusion regarding whether TSCT has significant intangibles?

A: Well, it's my understanding, as -- based on his testimony, that he's concluding that the intangibles that it has, unlike these prototypical cases of the high-tech companies or pharmaceutical companies or high-brand companies, he's asserting that there is some

procurement intangible, that this procur- -- that on the Texas side of the case -- I'm sorry, on the Texas side of the transaction, it's developed this, what he calls, a unique procurement function. A super duper procurement function that no other retailer has. And on top of that, there's also a product development intangible that somehow, kind of, imbedded within that procurement, it -- but, oddly, he's suggesting that that product development, it -- intangible has nothing to do with patented technology, it's simply the fact that the people -- the eight people within the purchasing organization that are responsible for product development and that single engineer, that somehow they give rise to this valuable product technology intangible for the Texas side.

Now, he also asserts that on the, on the Company side, the TSC side, that they've also developed these broader range of intangibles, these amorphous intangibles. I think that whole framework -- I -- and those, those intangibles, as I understand it, he asserts, is really about business process, maybe marketing,

I wasn't quite sure about how he, how he saw marketing in that, but pricing. So he's -- he is inferring, kind of, this broader set of amorphous intangibles in a context that I consider to be wildly inappropriate. I have not -- I have worked on headquarters functions for 30 years. I have never seen anyone in a, in a planning study, in a audit, in a -- in -- much less in a litigation, advance a theory that somehow these headquarters functions are themselves intangible generating activities, other than if you're talking about the R&D -- like, a pure R&D of a, of a pharmaceutical company, then, I would agree that is the type of intangible generating function -- or a branded consumer product company like Pepsi Co. that is investing billions of dollars in their advertising every year to develop brand awareness of their specific product. Those are the types of scenarios where you see intangibles come to the fore in a transfer pricing context, not in a case of trying to figure out the appropriate compensation for a procurement function.

Q: As an Economist, do you consider whether

there's a reasonable basis to conclude that TSCT has valuable intangible with regard to its procurement and product development functions?

A: No. I think there -- there's a question of how do you -- even if one were to come to that conclusion, as an Economist, I would need some kind of evidentiary basis to provide that support. As I understand it, Dr. Andrade came to that conclusion based on -- it appears to be, primarily, three interviews, depending on if you count the interview with the head of the tax staff or the tax department, and effectively, assertions by the Company itself, and I think he described his analysis of the SKU data as, kind of, going in -- as feeding into that. Although, based on my analysis of that data, I don't see how that could possibly lead to that conclusion. But I don't -- I think that is the -- and he also referenced the high profitability of the Company as another factor that lead him to conclude that there is this large procurement intangible. I think that is simply assuming the conclusion. That you need to go through a reasoned process, particularly, if you're wanting to advance a

theory that, I would say, is at the -- not just at the outer edge of anything that I've ever seen, but far beyond the pale. But there, there would need to be a substantial additional amount of evidence, particularly, because procurement is a standard function that every retailer performs. High profit, low profit, high profit margin, low profit margin companies. It is -- I've, I've worked for manufacturing companies for many, many years and they have reams of people who are involved in procurement every day, and their lifeblood is about ensuring that they can buy enough product at a -- and source enough product at a sufficiently low cost, at a high quality to ensure the products they manufacture are competitive in the World Market. Those things are not priced -- there -- there's no asserted intangible associated with that procurement activity, it is a -- it's basically table stakes in -- if you're a manufacturer, and certainly if you're a retailer.

Q: All right. So you've spoken about the in- -- the procurement side, so just briefly, if you could, through that same point, talk about the

product development side?

A: Sure. So, conceivably, there can be companies that -- and there are lots of companies that have product intangibles. And those are typically companies that produced novel, innovative products that -- typically, ones that are patent protected, some that may have some other kind of trade secrets imbedded into them in the manufacturing of them, etcetera. The produ- -- I think, I think Dr. Andrade completely misapprehends the nature of the product development when the na- -- and the specific products that are being manufactured by -- or that TSC is having its vendors manufacture on its behalf. These are, effectively, me-too products. These are the sa- -- they are pursuing that same private label strategy that just about every retailer of any significant size in the United States pursues today. Whether it's a -- your CVS that produces private label over-the-counter medicines, or your grocery store that has it's own private label brands, or -- or anything else. So, if you walk into the Tractor Supply store -- and I think we -- actually, we heard

from the 30(b)(6) witness that one of the exemplar products is its own animal feed. So it provides the -- which, in my mind, is very consistent with what I observe in the super market when I can buy the store brand granola, that -- so it provides its specification for a formula to a manufacturer, that manufacturer then sells it -- sells the bag of finished feed, it puts it on its shelf and the Company earns more profit from, from that ba- -- sale of that bag versus the national brand, because the national brand is going to charge a premium profit to the reta- -- to Tractor Supply for the branded product and for the advertising that supports that branded product. So there's a margin -- a bigger margin that the -- that Tractor Supply earns on those private label purchases, just like there is for the grocery store or for the, the -- your local CVS. So, these are me-too products where the value is not in a product development, it's in the fact that you are a retailer and you have the ability to place these -- and actually, they spend a lot of time strategically placing and strategically pricing, kind of, the -- well,

the store brand product next to the national brand product to induce customers to -- and, particularly, those who are more price conscious to buy the cheaper one, or I would also say, those who do more of their research to understand that the store brand actually is very comparable in terms of the active ingredient relative to the national brand products.

So it's that retail lo- -- it's a very different kind of product development effort with reg- -- than -- that he's implying with this notion of a -- of an int- -- some kind of product development intangible. Even with regard to the winch that, that the 30(b)(6) witness referenced as well. The -- you know, winches have been around for more than 1,000 years, like, they were used in catapaults in the Middle Ages, probably back in the Roman times. I'm sure they make a great winch. I'm sure it works wonderfully. But the point is, they're making a winch that is -- and they, they need to find a competent supplier of which there are many, many competent suppliers, particularly in Asia, but also in the United

States. Particularly, in Asia I mentioned for manufactured products. You can find them, they will -- you give them the specifications, they're -- of their -- they're -- a lot of these involve non-patent technologies, so these are not things that give rise to a protected position in the way that, you know, Apple has a protected position with it's I- -- with it's iPhone or with the iPod, when it came out with the iPod.

Q: You also referenced in your prior testimony your review or reliance on analyst reports and company earning calls. Why did you consider that information relevant as it pertains to your -- to this case here today?

A: Well, I consider it relevant in all my transfer pricing work, and beyond. I do a lot of other work as well. It's relevant because it tell -- so analyst reports, earnings calls, those provide third party data points of what observers ha- -- both observers and the company officials themselves say to the public about what's driving the company's profitability. And oftentimes in transfer pricing, you often hear these theories that a -- either an

economist or the company will throw out about what drives the profitability, particularly, when there, when there is a particular result that they're trying to achieve or trying to support. And these are third party -- these are important third party, either ways of confirming or refuting that particular statement. So, for example, FA- -- and, and these are -- I heard Dr. Andrade pre- -- seem to downplay the significance of analyst reports. Analysts have a very strong incentive to get a clear picture of exactly what's going with a company, its ability to generate a -- to establish a competitive advantage and to maintain that competitive advantage, and ultimately to grow earnings per share, because they are making recommendations buy, hold or sold. Those are really imp- -- their entire business depends on their ability to provide that credible kind of information. So they are highly motivated to get it right. And I find a lot of helpful information -- and not, not simply because it's somebody who's thinking about the issue, but it's because these are people who've -- typically, will follow a

company day-in, day-out, they attend those earnings call -- calls, they analyze a wealth of data and try and calpus- -- encapsulate that in the -- in their, in their reports. Some of those are written better than others. But if a company is asserting that they have the be-all and end-all of purchasing departments, I would expect that to be all over the place in the en- -- in the earnings, in the earnings book -- or the analyst reports, and in their earnings calls. And, frankly, if I were an analyst and I heard a CEO say, oh, we have the best purchasing organization in the world, is able to develop all these wonderful new products, my first question would be, why aren't you out there selling that to the -- offering that service to other parties? You're a five billion -- or, these days, a five to six bill- -- I'm sorry, in the day, five to six billion dollar of a sale company annual sales, why not sell it to Walmart? They have hundreds of billion- -- I'm sorry, they're a five to six billion dollar annual sales number. Walmart has hundreds of billions of dollars of sales. You could make so much more money as a company

selling that service to -- you know, whether it's Walmart or Home Depot or Amazon, if you really have the secret sauce. If you have the -- if you've solved it in a way that nobody else has, then more power to you, then show it in the market. And, frankly, I think you probably would have a, a duty to your shareholders to pursue -- to be able to pursue that as a way of providing them a return on their investment.

So, I think it's really important as a check on these often, kind of, inflated claims of, oh, this -- that our, our success is due to factor X or our solu- -- our success is due to factor Y.

Q: In your testimony earlier this week, you also considered brick and mortar presence to be important, if not the most important determinant of a company's profitability. Do you recall that statement?

A: I do.

Q: Okay. Dr. Andrade, I believe, says "retail picks up the revenue but not because retail drives the value." Do you agree with this statement?

A: No, not at all.
Q: Okay. Can you explain why?
A: Sure. So for -- probably -- just to start with the obvious, Tractor Supply is a retailer, full stop. There are other companies out there that have manufacturing operations and they manufacture and distribute their own products, and there are, even occasionally, a few that'll go all the way down into retail. That's not what Tractor Supply does. So it's whole reason of being, is as a retailer. I walked through -- I think I talked earlier in my direct testimony about the notion of monopolistic competition, which I thi- -- and, I know -- not that -- I don't wanna take a whole lot of time for -- of the Court's time explaining that, but I do think in my economist's heart of hearts, that's how retailers -- if we observe retailers that are earning some additional profits, it's because they have figured a way to optimize their particular business strategy in a, kind of, a monopolistic competition framework. And I'll just -- just bare with me for one quick analogy, in terms of how this came about.

So this is -- economists for a long time

have been trying to figure out. In a -- in a -- in an industry with low barriers to entry like retailing, why do you observe premium profits? All those profits should be computed away. Somebody else should come out and just replicate your format. And a -- an economist from the 30s, a guy named Hotelling, had this great insight, he said, well, imagine a road, and on that road there's enough traffic to support, call it five gas stations. So, in a -- kind of, your typical economic model, you just think that's not really thinking it -- in spacial terms you'd think, well, all five are gonna be in one area, they're gonna compete too, so to eliminate all excess profits, but in reality, each owner of those gas stations will decide to put their, their gas stations sufficiently far away from each other so that they're not facing that kind of intense competition. Sometimes they're forced to put them closer together because that's where a distribution outlet is or a busy intersection is, but generally they're, they're incentivized to put them more spread apart because each of us, as consumers, we have search costs, and so

if you can attract and ---

THE COURT: We have what?

A: We have search costs.

THE COURT: Okay.

A: So, it costs us money and time to go and find a cheaper gas station. So if there's -- my closer one is a little bit more expensive than the one 10 miles away, I'm probably gonna go to the closer one. Exact same thing happens in retail. And that's one thing that I think the Company -- the -- that TSC has figured out, is that, hey, there's this -- from -- at some point, as the Company evolved over time, it realized that there are these, kind of, basins of customers out there, primarily, in rural communities that can be served placing customers where these, kind of, these basins of demand, where they face relatively less competition from things like the mom and pop feed store. I think I mentioned them before. So they can -- because of their scale, they can buy things cheaper, so they can undercut the prices of the mom and pop feed store and they can offer this broader assortment. The broader assortment is kind of a different way of

thinking about this monopolistic competition concept, because it's not simply about spatial product dev- -- spatial differentiation, but it's also about, kind of, your product assortment differentiation. It's why some comp- -- some retailers are speciality retailers. You'll have like a Michael's that specialize in crafts. You'll have automotive retailers, after-market retailers. And then, companies like Tractor Supply, that is the rural lifestyle out-there kind of store that has a mix of farm stuff and tractor stuff. So I think that has a -- conceptually, that is kind of the framework that I came into this -- as I've -- and as long as I've studied retailing, that's -- I've always found that to be a reasonable clue as to what goes on in retailing with the caveat that Amazon comes in and changes the game for a lot of companies who do not have a natural moat, a natural protection. And, here, the Company has a natural protection in the fact that it sells a lot of these bulk items to cash customers, the feed, that -- those are things you can't -- that Amazon simply can't come in there and take

away all your business through the -- through, kind of, online ordering.

And I would say, there's one -- I think there's a, actually, a nice experiment here, and that would put the -- and economists often look for natural experiments. A natural experiment, basically, helps us to test the hypothesis. It's a natural experiment because we already observe it out in the, in the world, if we can just figure out where it's occurring. And that is in the fact that, Tractor Supply has an internet business. It had an internet business during these -- this time period. That internet business accounted for about one percent of its sales. Now, if the Company had this won- -- if everything was all about its procurement and all, and all -- and if it was all about its wonderful product development and everything else, why would all of its sales still be out of brick and mortar locations? It's because people -- the people that they are, that they are serving where the demand is, is from these customers in these rural locations, they want that, that -- and they value the assortment that TSC provides, but it

is that brick and mortar presence that is driving that. If it weren't, if it were all in the products, then basically, TSC would be putting Amazon out of business. That -- everybody would just be, order that online, why go into the, into the store. And because -- also because you can get a lot more of their products online. and it turns out, the -- I think 70,000 SKUs that you can get online, customers tend to pick those up at the brick and mortar location. So these are -- this is very much of a brick and mortar presence store that I just think -- and I think Dr. Andrade just completely misses the boat on that.

Q: All right. So let's set aside your opinion that the RPS- -- or RPSM is not the best method, we're just looking at the implementation of that particular method that Dr. Andrade used. Do you consider the implementation to be reliable?

A: No, not by a longshot.

Q: Okay. What measure of profitability or PLI, Profit Level Indicator, did Dr. Andrade use in his profit split analysis?

A: So, the bulk of the analysis he does at his

gross margin level, i.e., gross profits divided by sales.

Q: All right. And is that consistent with your understanding of the guidance provided in the §482 Regulations for applying the RPSM?

A: No. The RPSM both is based on the text -- or the Regulations and, as I have applied it and as everybody else who's work I've reviewed has applied it, even people on -- even folks on the, on the opposing side in many cases, that is always at the operating profit level. And it may be -- there, at least, may be some adjustments, different economists have different flavors of how they, they deal with operating profits in an, in a pro- -- in a residual profit split framework, but you're always at operating profits with some potential adjustment, you never are at a gross profit level the way Dr. Andrade did it.

Q: And does it matter, in terms of the analysis, whether you use gross profits or operating profits in applying RPSM?

A: Absolutely.

Q: Okay. And can you explain that, please?

A: Well, one of the reasons the regs -- the §482

Regs go a great -- some length to talk about under what circumstances you should use one profit level indicator versus another is because your analysis and the data that you're using will tel- -- can tell you different things depending on that profit level indicator. I think early on in my direct I talked about, sometimes you'll use the return on assets to evaluate a company, another time you'll look at the operating profit. Well, the same thing about a operating profit versus gross profit, and the companies -- particularly when you're, when you're trying to find comparable companies and you're, you're using those comparable companies in a first step to define what's called this routine profit, like Dr. Andrade does, that there's gonna be substantial differences among companies in terms of how many of them have a lot of gross -- have, have -- are primarily heavy in the, kind of, gro- -- cost of goods sole area versus in operating expenses. You'll have companies that -- let's -- the easiest one to think about is customer service. If you have a comp- -- a company that invests a lot in customer service,

it's gonna have a lot of operating expenses, or it may have a lot of advertising expenses. And other ones, they may not -- may be, may be providing less of that, and so they'll -- they will, on a gross profit level, they will look -- they -- the companies may look similar, right, but they -- but there's a difference in terms of the overall composition of their costs. So at the end of the day, the operating profit really helps you get a better comparison of -- across companies, particularly with a company that you're trying to test. But there's this notion of -- and there is a -- the difference in product differences and company strategy differences, it tends to wash out a lot more at the operating profit level when you're, when you're calculating operating margins than in gross margins. Companies can have a lot of differences in their gross margins for a lot of different reasons that have nothing to do with the company that you're evaluating, and that undermines the reliability of your analysis, and that's the key word, that the §482 Regs stressed over and over again. It's like, you know, you have to have a method

and an implementation of a method that gets you to a reliable result. And the use of the gross profits in the way he's doing it, both with the RPSM and then in -- and in particu- -- because that's how he's defining the profit to be split, and in defining the functional profit is a -- you know, it's a -- it's all -- at least, a little Humpty Dumpty-type approach, 'cause you're breaking the company apart and then -- and you're breaking all these profit levels apart, you're trying push -- put them back together in different ways, and the end result is a little bit of a Frankenstein. Whereas, if you're at operating profit, you know what you're dealing with, you've got a certain amount of operating product -- profit, we're not doing something -- we're not trying to do rocket science, we're just trying to split it between two entities and it's a lot easier to say, okay, a certain fraction goes to my manufacturer of the pharmaceutical product and I'm splitting between a brand developer and the, the R&D company. Doing it up here at the gross profit level and then trying to reconcile through -- with operating expenses leads to

some results that are frankly -- and Dr. Andre-- Andrade, in this case, results that you -- I can't even tie back to the -- through the calculations.

Q: And do you also recall testimony from Dr. Andrade stating that he applied the CPM or comparable profits method as part of his application of the RPSM Method?

A: Yes.

Q: Okay. Can -- do you agree with that characterization and application of the residual profit split method called -- that it calls for also applying the CPM method as a step in the residual profit split method?

A: Well, I -- and I don't want to emphasize too much, you know, get into semantics, but I do think there's a potential for confusion because the comparable profits method is a distinctive method under the Regs, is that -- it has it's own section just like the RPSM, the -- or the profit split methods more generally are in dash 6, the re- -- Section of the Regs. The comparable profits method is a distinct method that has it's own section called the dash 5 portion of the Regs. Now, it is correct in, so

far, as the, the -- or it -- in concept you -- the dash 6 Regs, the profit split method reverts back to the dash 5 Regs, in terms -- just in terms of ways of, this is how you need to come up with this routine profit, this first step. But it is a very different method than the CPM. It's a -- so when you -- and it's -- that's really important for an economist, because you have to decide what is the best method, and I think it's really clear here that Dr. Andrade appears to think that the RPSM is the best method and not the CPM, even though he applies a benchmarking analysis as part of the RPSM.

Q: All right. So we have on the screen -- and this is not an exhibit, it's part of the §482 Regulations, which you've been talking a good bit about the dash 5 and dash 6. So, dash 6 was dealing with the profit split we just talked about, and now we're looking at the dash 5, which is the Comparable Profits Method. Are you familiar with this Section of the Regulations?

A: Yes, I am.

Q: Okay. And in calculating what, what Dr.

Andrade asserts to be routine returns of Texas and TSC, did Dr. Andrade use operating profits?

A: No. So, just like in the RPSM -- in his whole RPSM framework he's doing it on this gross margin basis, he -- likewise, on his -- in benchmarking the routine returns, he's using gross margins as well. And that is entirely inconsistent with the guidance in the CPM, which is -- which strongly favors the use of operating profits, that little -- kind of -- there's an asterisk next to that statement because there are certain circumstances when use -- when you will use gross profits in deriving one specific ratio called the Berry Ratio, and I talked about that before. But that Berry Ratio is not gross profits divided by sales, the gross margin that Dr. Andrade uses, rather gross profits divided by operating expenses. And recall, gross profits less operating expenses equals operating profits. So, effectively, we're still dealing with a bundle of costs and profits that lead to operating ex- -- operating profits, we're just looking at them in a different way in certain, relatively, narrow circumstances. But his

application of that, the gross margin, is entirely inconsistent with the guidance provided in the, in the Regs, in the dash 5 portion of the Regs about the CPM.

Q: And what types of companies does Dr. Andrade use as a benchmark for calculating the routine gross profits for both TSC and TSC Texas?

A: So in the testimony he provided yesterday and today, it appears he's relying primarily on a set of, what I, I on- -- can only conclude are private farm retailers, so they are retailers. So it's gen- -- the -- conceptually, the approach is similar to what PwC did in, kind of, the last portion of its analysis that I walked through before, before you get to the intangibles section of the PwC analysis. So, PwC had what they call their routine retailers. Dr. Andrade has what he considers to be his routine retailers. Again, PwC is doing it at an operating profit level, which for all my criticisms of PwC, I sti- -- you know, they used the correct level of operating profit in their calculation -- the correct level of profit -- correct measure of profit. Andra- -- Dr. Andrade did not. So, as I've gone through

those comparables, these are -- these farm comparables, many of them are small, actually, a vast majority of them are small, so unsurprisingly, I think his set of comparables are biased in ways probably even more extreme than PWC's set of comparables and -- I mean, more extreme because of the, kind of, the size of them. And they, they are private, you'd expect these private companies are gonna be smaller than the public companies generally. Some of them are co-ops. A co-op is a very different business model than a for-profit corp- -- corporation. So it's -- generally, that's the set of companies he developed. He has an alternative, calculations he did in his work papers with distributors, but the primary ones he's offering here are based on retailers.

Q: All right. So let's talk to his portion of the opinion where he splits the 50 percent residual gross profit to TSC, is that -- T. Is that your understanding, or what is your understanding of Dr. Andrade's opinion regarding the outcome of his residual profit split method?

A: So, again, because he's starting at gross

profit and -- or gross margin, he's got to go through a couple different steps before he gets to the end result. So he's still -- the first step is to calculate routine returns, which he benchmarks against these, what I'll call, relatively small -- I don't know if they're mom and pop, but they're relatively small farm implement retailers, they're gross margins, again, which I think is a incomparable or inappropriate use of the, of the benchmarking described in the CPM, then he's left over with a pot of money, a residual gross profit, not residual operating profit as under -- specified under the Regs, but residual gross profit where you have a bigger pool of money, and then he -- and he whacks that up 50/50 based on what I only can infer is his judgement. I don't, I don't know how else to characterize how he came up with his 50/50. It's certainly not based on any quantitative analysis. And even the qualitative analysis is, I think, in- -- from an economic perspective it's entirely unreliable.

Q: And do you consider that reasonable and consistent with the guidance of the §482

Regulations?

A: Abs- -- absolutely not. Even if he had started with the right level of profits, even if he had applied a reasonable set of comparables to derive routine profits, and even if the RPSM with the right framework, the moment you apply a -- kind of, this ad hoc 50 percent number, even if he says, oh, I was being conservative, it's -- it is a number that is devoid of any economic content. It is simply a number he's making up. And I have, again, I have done transfer pricing studies for 30 years, I've done profit splits since, pretty much, the early -- the -- I'm pretty sure my first year I was doing profit splits, and I've seen them in documentation studies and audits, in litigation proceedings, in advanced pricing agreements, I've never seen anybody just make up a number like that for the profit split. It's -- and it is such an important parameter, and we see that because it drives hundreds of billions of dollars. So you're, effectively, just assuming the conclusion. You're saying, yes, I think Texas should earn $500,000,000 a year, or whatever -- or 500 -- it's

$500,000,000 a year, whatever the number he comes up with through that application of his 50 percent number to that pool of gross profit.

Q: All right. So just taking -- just, so I understand and the record is clear, and we all are on the same page. Setting aside your disagreements -- or criticism of Dr. Andrade's analysis, have you been able to replicate his calculations to identify whether there any errors in his calculations or approach?

A: So I have never been able to fully reconcile the calculations. I've seen in some of the -- this report that he provided as part of his files, I saw kind of a number that I thought was clearly erroneous. He referenced -- he was comparing the results he got with what he asserted to be the South Carolina Net Income of $30,000,000 for 2016. I've not seen a 30 million dol- -- well, I have -- sorry, I have seen $30,000,000 in -- and I saw it in the underlying work papers, but that was before transfer pricing. That was the pre-inventory, pre-headquarter's expenses and everything else. The income reported on the Tax Return for South Carolina is about $5,000,000 in 2016. So

there, there are other just inconsisten- -- inconsistencies in his spreadsheets that don't allow me to, kind of, tie -- tick and tie all the numbers. And it's also -- it lead me -- and I -- part of the reason I was confused about that is because, conceptually -- and I can get conceptually how, if somebody's doing a profit split at this gross margin level and the gross profits are really, really big before you -- and the operating profits are big enough, gross profits are even larger, so if you're splitting this really, really large number and applying 50 percent somewhere along the way, you're gonna get a really, really num- -- big number for Texas. But what surprised me -- well, I found non-intuitive, is if someone was applying the residual profit split method to the business based on the -- what was already in PwC's Report, in their 2014 Study, he should've obtained a number that was significantly less than the 9.7 percent inventory markup, as the quote/unquote arm's length price. And we know that because, as I said in -- earlier in my direct testimony, that the Company derived the 9.7 percent markup

based on this notion of a routine retail return. They came up with 3.2 percent based on the PwC Study. So, 3.2 percent is what the retailer gets and everything el- -- and then everything else, i.e., the 9.7 percent markup on the inventory is gonna be what the procurement company gets. Now, if Dr. Andrade comes in and says, I'm advancing a residual profit split theory, he's already effec- -- and you apply that to that framework, that operating profit framework that's used in the regs, you've already got your routine return of 3.2 percent, you don't need to redo it with a new set of comps. You apply that 3.2 percent, again, just take them at -- taking them at face value, and I think a biased low number, that nine -- the 9.7 percent should be whacked in half. According to Dr. Andrade's theory, half of that actually belongs to the parent company, because the parent company is contributing an equal value of intangibles as the procurement function, so the procurement markup should be half of the 9.7 percent. In other words, about five point -- oh, I'm sorry, 4.85 percent, that's what doctor -- the application of this

residual profit split framework to the numbers that area already in -- at an operating profit level in the, in the PwC Report, that's the conclusion you should draw in an almost-final step, in the penultimate step. The ultimate step, of course, is that his assumption is that the Company, TSC, is contributing all these -- about 50 percent of these intangibles are part of the, the South Carolina Taxpayer, TSC, the Corporate Company. Those would apply not just to TSC's sales, but also to Texas's sales -- Texas's retail sales, and to Michigan's retail sales. So, that net procurement amount that they should, they should be earning is substantial -- that net procurement revenue that Texas should be earning is substantially less because Texas should be giving up a portion of its sub- -- according to the theory, excess profits it's earning from the Texas retail sales back to headquarters for all these supposed intangible generating activities that the parent company is providing to the Texas retail sales.

So that's where, even if you apply that method, you should get a number that would

clearly show that -- the amount the Company actually did use, the 9.7 percent, was not anywhere close to an arm's length result.

Q: Do you also recall testimony regarding passive association benefits?

A: I do.

Q: Okay. And do you recall his analysis with regard to that subject area?

A: I recall his assertion of that, yes.

Q: Okay. Do you -- what, what is your opinion with regard to those assertions for -- as they pertain to passive association benefits?

A: It -- I conclude that he misapprehends the whole notion of a passive association benefit. The -- it's called a passive association benefit because it's passive, you don't do anything to actively create it. And there's, kind of, a cleaver that's drawn between things that the Company is actively doing, or parts of the -- one part of a Company is doing for the specific benefit of other companies, and things that members of the comp- -- of a company, joint members of a combined, combined entity, they -- the benefits they enjoy simply by being members of the group. And that's one of the

reasons why economies of scale is the quintessential poster child for a passive association benefit. That every member of the group benefits because of the aggregate volume of purchases or sales that the company, the company makes and therefore, you can't interpose a related party somewhere in the purchasing transaction and simply say, oh, because the company, if it were a small -- if it were a mom and pop operation, it would pay $10 for that particular pair of galoshes, but we are a hu- -- we are able to buy it from a third party vendor for $5 because we have $5,000,000,000 of sales. So our actual cost -- third party cost is five bucks, but now I, the purchasing agent, am going to turn around and sell it to my related party for $10, and transfer pricing authorities around the world have said, you know, hold on, that is completely non-arm's length. The only reason the procurement aid- -- the compure -- the procurement arm is reselling at that higher price, or the only reason it's able to buy at the lower price is because it is a member of that broader group. So, the low price was --

is a benefit that -- it's a passive association benefit that it gets, and it can't effectively exploit that in its related party transactions.

So, I think he completely misund- -- so he seemed to think that that was all -- that we need to, kind of, go one del- -- level deeper and figure out how, how these economies of scale are derived, but when it comes down to the substantial vendor discounts and the prices -- and these are the basis -- this is the very basis of Pricewaterhouse's entire Study. There's a line. They select their retailer comparables explicitly on a premise that there are economies of scale, and that the economies of scale in this business, and that TSC enjoys, and then for some reason -- the TSC retailers and TSC in particular should not enjoy those benefits. That's why they screen out the -- any company -- any retailer with a billion dollars of sales or more, of sales. Dr. Andrade comes to the same result, effectively, with his smaller farm implement-type, type private companies, but that to me, is simply -- you're still doing the same thing of appropriating, kind of, this passive

association benefit over to this very, very small procurement function performed by tin- -- this tiny -- tiniest of fraction of that -- of the broader employees, is then getting $350,000,000 of annual benefits, and that is completely inconsistent with the Arm's Length Standard.

Q: And do you also recall testimony related to your analysis of the realistic alternative principle?

A: Yes.

Q: And as part of your direct testimony you discuss one of the sections of the §482 Regs that mentions the realistic alternative principles.

A: That's correct.

Q: Okay. Do you agree with Dr. Andrade that the appropriate application of the realistic alternative principle is to consider it both from TSC and TSCT's perspective?

A: No, not at all.

Q: Okay. Can you explain the basis for that statement?

A: His interpretation would basically, kind of, do away this -- with this entire provision of the

Regs. And it's act- -- actually, I should say, this is a principle that's applied in lots of different portions of the Regs, and it's particularly applied in the case of a transaction. And I know that doc- -- Dr. Andrade seems to think that the 2001 transaction is irrelevant, but the whole point of the realistic alternative principle is, you apply -- when you have a transaction like that and you see that there is a change in a -- kind of the functions that a company -- that one entity performs or there's a transfer of an asset at that particular point in time, it's because that transaction would not occur at arm's length -- or it would not occur at the price that the related party -- that the related party just set between these -- between the two entities if it's inconsistent with it's realistic alternatives.

So, for example, if I want to transfer -- if I have a trademark, call it Tractor Supply in 2001, and I want to transfer it to a third party, I'm gonna sell it, if it's a valuable trademark, I'm gonna sell it. And it -- and -- or I'm gonna charge somebody else a royalty for

the, for the right to use it. You wouldn't simply -- it is -- it would be inconsistent with the realistic alternative principle to simply give it over to somebody else for no compensation. It's why in the international world we have -- the §367(D) takes in another provision of the Regs -- of the Tax Code, and applies the principles of §482 to figure out how do you price that transaction to make sure that, if there is a transfer of an intangible with an outbound transfer of a non-intangible overseas, or even an inbound one, you have to make sure that the, that the compensation reflects the reasonable alternatives. And it's not just about an intangible asset transfer. Even if TSC had retained the trademark or gave it for -- out of a royalty license or a royalty-free -- allowed itself to use forever, you -- the -- it can't -- it would never enter into and bind itself to a procurement agreement in which it's giving up hundreds of millions of dollars annually in return for forgoing the responsibility for this -- in the time period at issue, $13,000,000 in annual expense. That is inconsistent with the realistic

alternatives, and this is actually spelled out in a classic example in the Regs that says, companies that have any kind of a valuable function they're performing, they don't necessarily give away the profits associated with that. If they're going to tran- -- they can transfer it if they want, or they can license it or they can move their functions around, but at the end of the day, the dollars can't be so dramatically different between what would've occurred had they continued to perform the transaction, i.e. -- I'm sorry, the function. If the transfer -- so the -- you can't have a result that the trans- -- that TSC forgoes hundreds of millions of dollars of revenue that it would've otherwise earned had it continued to perform the procurement function. You have to get that pricing consistent with the reasonable alternatives.

Q: And you touched on something -- or you said something a minute ago, and I'm gonna turn back to it. You -- your work is primarily in the international context, is that correct?

A: That's correct.

Q: Okay. And given your analysis and review of

information in this case and, of course, understanding your background in §482 in interna- -- in the international context, if the entity was located in the Caman Islands, for instance, instead of Texas, how would that impact your analysis here?

A: Well, in international context, that's a huge red flag. Not simply because it is in a, obviously, in a tax haven, but because it's a -- when you're moving a function like a procurement function into a tax haven, that's -- that sets off alarm bells all over the place in the international tax world, and particularly, when there is a substantial flow of value as a result of that. And like I think I said earlier, that the tax authorities for many, many years have been concerned about exactly that, this procurement-co, kind of, strategy. Or any other kind of strategy that moves a function that a taxpayer asserts is a high-profit function without adequate compensation to the entity that's performing that function or that owns that particular intangible. And I think -- actually, I think, I think that's a good litmus test for trying to

assess the -- kind of, the reasonableness of the compensation is if you -- there's a lot of ways in which we can talk about, kind of, these legal entities and I -- as an Economist I refer to them as legal fictions, not because I'm disputing their legal existence, but just, simply because it's a layer of paper that you put on top of the actual people that are doing the business, the people that are in the stores, buying the stuff, running the distribution centers. So you can have this layer, this kind of pattern you layer on that and you can artfully snip around different, different things to carve out different legal entities among them. And now, a great litmus test as to, kind of, the reasonableness of the result, is to change the word of wherever the comp- -- the, kind of, the new entities are located to the Cayman Islands. And there, it's like if, if it raises your hackles, if you say the word Cayman Islands, it should raise your hackles if it says the word Texas, in terms of a non-arm's length transaction.

Q: All right. So, now, we're gonna start winding down, hopefully. Everyone's tired. I know

everyone's ready to go. So, there's just a few quick items that I'd like for you to address.

In some of the testimony yesterday, a witness said, a good way to evaluate a particular corporate structure is whether the company would implement the same structure in a world without taxes. Have you dealt with other large companies which purchasing functions?

A: I have. Many.

Q: Okay. And have you analyzed their purchasing functions?

A: Yes, I have.

Q: Okay. And in your view as an Economist, in a world without taxas -- taxas -- (laughter) -- tech -- taxes, would Tractor Supply have moved its purchasing comp- -- function from TSC to TSCT?

A: In my opinion, not at all. There's no efficiency benefit. There are efficiency benefits from centralizing a function that was previously dispersed, so I can see a lot of -- not -- things that happen in a world without taxes where companies still centralize those loc- -- those activities, and they may

centralize them in areas that don't have -- that are -- that have favorable tax regimes, but the idea that a company that has this integrated headquarters function would somehow take away -- that like hive off this purchasing function and -- purchasing and merchandising, it's not just about the vendor relationships -- and it also has the product development side too, that they're -- that is an integral function and it's part and parcel of the broader headquarters that it, that it aims at tremendous efficiencies from having that as part of the same organization. There are -- economists have long studied reasons why companies vertically integrate. Why don't they simply outsource it versus bring them inside? Some of it is because you get those efficiencies from having people working directly together and you're -- and it's gonna be cheaper, as well. But it also enables you to -- over, kind of, a longer-term dynamic it helps you to -- for one part of the organization to work consistently with the objective of the other part of the organization. The Company's 30(b)(6) witness,

I believe -- or -- and maybe it was in some of the documents, there were statements that, somehow the separation of the purchasing function would facilitate the Company's future acquisition strategy, which I see as completely antithetical to a -- an acquisition strategy. You need the people who are leading the charge with the acquisitions to be working directly with the -- in the same company -- or you are most efficiently operating in the same company with the purchasing folks, in order to ensure that when a new company is brought in that you can then integrate that new company into, seamlessly, into that broader organization. That's why a lot of companies merge, is because they save on essential costs. So, I, kind of -- I've heard those arguments and I just -- I think, particularly, in the notion that a company would disaggregate the -- or, kind of, pull out the purchasing function, that's something that is completely contrary to everything I've seen.

Everything I've seen in the international space, is where companies gradually will centralize it, but not take an existing piece

and just, kind of, put a little -- again, another one of these layers, this legal layer with -- and, kind of, put these -- the different folks in different entities.

Q: And early in your testimony, again, from an economic perspective, and within your expertise as transfer -- in transfer pricing, you testified that if the Taxpayer had applied separate reporting and had priced it's related party transactions on an arm's length basis, the results would reasonably approximate what the Department has calculated using combined entity apportionment method?

A: Correct.

OBJECTION:

MS. GEER: Your Honor, I'm sorry, I wanted to object before he answered, but. I just want to preserve my previous objections on this point, that he's testifying as to a legal conclusion.

THE COURT: And what is that, so I can remember?

MS. GEER: It was our Motion in Limine and ---

THE COURT: Oh, okay.

MS. GEER: --- on his opin- -- that we disagree that he would -- should be able to give opinions from an economic perspective on, basically, the

language of the Statute in economic terms. So just want to preserve it ---

THE COURT: Okay.

MS. GEER: --- for the record.

Q: Okay. And in response to your opinion, there was some testimony suggesting that, that result would be "sheer coincidence." What is your response to, to that statement?

A: I find that comment completely inapposite. It is no coincidence that a company that has no other related party transactions, or has very minimal, kind of, transactions other than the essential procurement function, where the company has set its transfer pricing to effectively move the vast major- -- or if it was such a large fraction of TSC's profits to Texas, it's no coincidence that if you were to price that at arm's length, then -- because this is an administrative service that you -- that the result that you would get would be, approximately, the same as under a combined entity apportionment. I said before that, one way to deal with administrative services, and one thing I've seen a lot of companies inter- -- on an international basis do, is to allocate

those -- the costs of those corp- -- of those, those services on a proportionate basis. If you were to allocate those costs on a -- just on a cost basis with no markup, you effectively will get the same result as a combined -- on a combined entity basis, if the profitability of the stores in TSC are similar to the profitability of stores in Texas on an operating profit level basis. As I talked -- showed in my, in my direct testimony, those -- the profitability is very similar. The underlying profitability of the stores in South Carolina, they're effectively the same on an, on an operating margin basis as the ones in Texas. So, even in -- though, certainly, you get this -- you would get a almost identical result if it was bas- -- if they were allocated on cost, the same way that the Company allocates the cost of its other headquarters' functions that 82 -- I believe, 80 to 100 million dollar number that they allocate out from the headquarters out to both Texas and Michigan, or if they were to apply a reasonable markup on the cost of those services, on that 12 -- if they'd say, okay, there's 12 million

dollars -- or call it 13 million dollars of costs for the procurement service, arm's length -- I would consider a reasonable number for the Company to have used, would've been 10 percent markup on that thirt- -- on that 13 million dollar number, that's 1.3 million dollars. Allocate 80 percent of that to -- back to TSC, that's a million dollars. We talked further about, there would be -- how they're -- I would expect there to be off-sets to that because, by the same token, the headquarters should be allocating a -- or should be assigning a profit on the administrative services it provides, or at least a portion of those out to Texas and to, and to Michigan, and it also receives a -- should receive a markup on the services of people that it provides to Michigan. You net all of those numbers out and, frankly, you get a little bit you -- under a separate reporting basis, you should get a little bit more income than under a combined reporting basis because of the disproportion of where all the activities are performed, because Texas is really only responsible for 14 percent of the headcount of the broader headquarters

operations.
Q: As an Economist, and based on your view of how companies generally price intercompany transactions, do your conclusions in this case with regard to Tractor Supply have any implications as to whether there should -- taxpayers should be filing on separate entity versus combined apportionment -- combined unitary reporting?
A: No.
Q: Okay. And is it your opinion that, all retailers should file on a combined entity apportionment basis as an alternative method?
A: No.
Q: Okay. All right. And one last area -- one topic. There was some testimony yesterday that suggested the Department's use of combined entity apportionment as an alternative apportionment method should not be used so often that it effectively swallows up the use of separate entity apportionment. Do you recall that testimony?
A: I do.
Q: Okay. And if the Court agrees the Department's justified in applying the method that they have

applied, and based on your understanding of how companies generally implement transfer pricing, is -- do you bel- -- in your opinion, is there a risk that combined entity apportionment methods would swallow up the use of separate entity apportionment by other companies?

OBJECTION:

MS. GEER: Your Honor, I would object to that. I think that's got to call for speculation. And that ---

THE COURT: Well, I'm gonna ---

MS. GEER: --- depends on how the ---

THE COURT: --- let you respond, but it -- I'm not so sure about that one.

MS. WOOTEN: Okay. Let me see if I can, if I can fix it. I'll withdraw it. All right. That's all, that's all from the Department, Your Honor.

THE COURT: All right.

MS. GEER: Your Honor, if I could have -- I think, that if I could have a little bit longer break than normal, like 15 minutes instead of 10, then I could be done by 5:30. Would that be fair -- allowed?

THE COURT: Well, I'll do that if you guarantee it,

but ---

(*Laughter.*)

MS. GEER: I mean, I'm, I'm pretty sure that that will be the case.

THE COURT: Okay.

MS. GEER: If it's not, it won't be off by very much, like five ---

THE COURT: Well, okay. Well then, I'll go for that.

MS. GEER: Okay. Thank you.

(Off the record from 4:41 p.m until 4:56 p.m.)

THE COURT: All right.

DR. DERAMUS - CROSS-EXAMINATION BY MS. GEER:

Q: Dr. Deramus, we're nearing the finish line here.

A: Yes.

Q: All right. So, one thing you said that is -- is that there were no operational consequences. Isn't TSC parent doing something different after the restructure? They're not doing procurement anymore in the parent, correct?

A: Well, I said operationally, right, so the parent, as I said before, there is this ability to layer over, kind of, a legal structure on top of the people that are actually doing the

operations. So when I say, no operational consequences or no economic effects or no financial benefits, certainly, the -- what I meant was, nothing is happening on what I -- economists often refer to it as the real economy, the people that are actually doing the functions. There was no change in how people -- or, at least, as I saw it, how people did their functions.

THE COURT: And ---

A: Attributable to the -- kind of, this notional transfer of people from TSC to TSCT.

Q: So in other words, you're viewing it from the whole business, you're not viewing what each entity is doing differently?

A: Well, like I said, I -- I'm not questioning the fact that the, the employees are int- -- are legally the employees ---

Q: Right.

A: --- of TSCT.

Q: Right.

A: So -- but then -- but the operations of the Company did not change one iota from time T-minus one to time T-plus one after they implemented those, those restructurings, other

than to cause the accounting folks some headaches.

Q: Well, did you hear the testimony regarding that there were less than 10 employees doing procurement for ---

A: I ---

Q: Hold on, let me finish the question -- pre-restructure, and in post-restructure they grew that to, what's now, 200 employees performing that procurement function, and the procurement function that was being performed pre-restructure, was basically the buyers -- only buyers, for the most part, and a lot of contracts with third party procurement parties, and then after they developed all the different positions and functions that we've heard about in terms of exclusive brand development, the inventory planning team, the data analysis, I mean, you heard Ms. McKeown's testimony on all of that, so is that not an operational difference?

A: The Company's operations have evolved over time. I think it's important, first, to kind of parse out two different data points, or maybe one data point, and then the

characterization that you provided. One is the number of people. So, it was unclear from Ms. McKeown's testimony when she said 10 people whether she's referring to 10 buyers or she means 10 people in this broader procurement/merchandising function. If you go to the actual employment records that the Company produced in discovery here, there's approximately 33 people who are lit- -- who have, literally, have the procurement title that are sitting in -- under the, under the Texas umbrella. So there's 100 and -- it's 180 people, I believe, in total and there's 30 some odd that are, you know, buyer one, buyer two, coordinate -- buyer-coordinator, they have that as an actual function. The company over time -- so I don't have a, kind of, a similar spreadsheet to compare all the people in those functions that were transferred over to be able to tick and tie the numbers that Ms. McKeown was actually referring to, but I could see that the -- so, so I -- I'm not quite sure what the right benchmark is, i.e., 10 versus 180 or is it 10 versus 33? But I would say, that the one thing I do know is, even respective --

irrespective of that, the Company grew from about 4,000 employees in 2000, right before the restructuring, to -- what are we at? I believe 26,000 as of the date -- during, during the time period. So it grew by a factor of over six and a half. So, I would reasonably expect as the Company is growing it's buying -- it's going from the 800 million dollar business to a five or six billion dollar business, it's building out that function. You need more people interacting with more vendors. You're increasing the number of SKUs over that time period. There's nothing in that restructuring that I observed, and that I consider as a -- that I would even consider to be an economically plausible argument, to suggest that that change in that legal overlay affected one iota of the way that function developed over time.

I would also take serious issue with the way that, that function is even being characterized in terms of how it's changed over time. As of 2000, we know from the 10-K, the Company had private label brands, it had direct vendor partner -- they even called them in the

10-K, our vendor partners, and they talked about having extensive vendor partnership relationships with many of our major vendors and we are further developing to ensure that others of our vendor partners are going to be -- become in this partnership kind of framework. So this whole notion of a -- of -- that somehow TSC was operating solely through, kind of, a middleman structure, that they were operating through some other wholesale distributor with no relationship with the ultimate vendors of the products, I think is completely contradicted by this -- the Company's statements in its, in its own 10-K.

The Company also references, back in 2000, product development. It's not like it was not doing product -- so according to the 10-K, it was doing product development, as I would expect, based on the fact that, like, this -- the whole notion of private label products is nothing new, and so, as a company that is trying to retail a product and establish a different -- a, kind of, a anoth- -- their own, you know, Tractor Supply, whatever brand they want to put on it, boot next to the Wolverine

boot, the national brand Wolverine, they want to price it a little bit lower, that concept has been around for many decades, preceding 2000. So it's not like this is a -- I don't think the -- that the function was a de novo function that came out after 2000, and -- based on the evidence that I've seen. And, furthermore, there's nothing about this, kind of, slicing and dicing of this, kind of, this legal layer on top that changed one iota in terms of how that function developed over time. Has it developed over time? I'm sure people became better -- I -- I've become better at my job over time. It's not because I live in some kind of -- within some kind of corporate framework, it's because I've gained years of experience, and I've -- so I've become more efficient at my job. I expect the same thing happened with the people there as they, kind of, grew up in those -- into those roles. But that's not a function of the structure that -- this legal structure that the Company imposed at that time.

MS. GEER: And, Your Honor, I'm not saying this at all to ever prevent Mr. -- Dr. DeRamus from

giving a full answer, but my estimate of 5:30 was -- that was a very lengthy answer, so if I get lengthy answers like that to all of my questions, I apologize, but it may not be, it may not be 5:30. I wasn't anticipating that lengthy of an answer to each question, but, maybe, maybe they won't ---

THE COURT: I will say that, if you expected him to give short answers, that might've been naive.

(Laughter.)

MS. GEER: Whoo.

THE COURT: But, go ahead.

Q: So, I -- I'll let the record speak for itself, as to the changes that happened with the procurement function pre and post, and I appreciate your comments.

Are -- were you saying that it is only proper to value intellectual property that's R&D property?

A: No.

Q: Okay. Tell, tell me when it is proper to evaluate IP?

A: Well, well, certainly when -- if it's -- when it's within the scope of the transaction that's being considered, that -- whether it's a

trademark or a consumer brand, or a patented intellectual property, and even sometimes a manufacturing process in -- under circumstances, if it is part of the related party transaction, it's appropriate to value that, either if it's being used, i.e., how you value -- you need to value with -- in terms of a license, a royalty rate, or if it's a transfer, in terms of, effectively, a purchase of that asset.

Q: And does an intangible property include intellectual property?

A: Yes, it does.

Q: Does it include trademarks?

A: It does.

Q: Trade names?

A: Yes.

Q: Product development?

A: Product develop- ---

Q: Is it -- is product development an intangible asset? I should've asked it that way.

A: Not in and of itself. It is something that leads to -- for -- as an Economist, I consider product development an activity, and the activity is what can create intellectual

property or in- -- or intangible assets at large, depending on the particular industry.

Q: Would vendor relationships be an intangible asset?

A: I thi- -- I believe, that they can be considered such in the §482 Regs. I would need to go back and look at the specific provisions, but yes, in -- again, the facts -- depending on the facts, yes.

Q: Okay. That time you stopped short, I was just getting ready to drink.

A: (Laughter.)

Q: All right. So ... (Whispering) wrong place.

And do you believe that intangible property can be the crown jewel of a company?

A: Indeed.

Q: And how would it impact the value of the Tractor Supply retail stores if they were not allowed to use any intellectual property owned by Texas?

A: I would go further than Dr. Andrade. I think it would be extremely disruptive. I think the whole, the whole notion of it being -- in a related party transaction, of it being denied the ability to use it, is one reason why the

whole notion of a -- this transfer is inconsistent with its reasonable alternatives. That -- back to that, that all over-arching principle, that a -- at arm's length you don't put yourself in a, effectively, a poor bargaining position in the future. You don't give up -- if you, if you have a -- you're operating under the Tractor Supply Company brand name and I -- if I provide it to a third party, particularly, if I provide it for no compen- -- for no compensation, I am putting myself at risk of that, of that party terminating my license, and that is a -- a -- A; a reason to evaluate that transaction holistically to ensure that if there is some kind of transaction like that, then it needs to be priced appropriately, particularly, if it, if it confers real rights on that related party to do exactly what you're talking about.

Q: So what is the -- what did you determine is the arm's length price that TSC of Texas should charge for the use of the IP that is owned -- that it owns?

A: Zero. I believe I said that in my direct testimony. Zero.

Q: Okay. And is that, is that answer the same if the -- if Texas is not charging for the procurement function?

A: Yes, the -- as I said before in my direct testimony, that that -- that the Tractor Supply name was developed over many years and it was transferred into TS- -- to TSCT, to Texas, in -- particularly, in a §482 context you would evaluate that relative to the compensation that was exchanged for that to determine whether there was a price paid, and if there was not an actual price paid, under §482 you'd actually infer a royalty going forward that TSCT should be paying TSC because TSC was the one that originally had the, had the transaction and it was transferred for no consideration.

Q: Okay.

A: Furthermore -- I'm sorry, if -- it's -- this is one of those questions ---

Q: No, you're fine ---

A: --- because it's a ---

Q: Yeah.

A: It's a big issue in transfer pricing, is the transfer of intangibles for no compensation, and tho- -- there's §367(D) that's implicated

and the §482 comes in right, right alongside it. So there -- there's a valuation issue that, that crops up first and foremost. And then, there's the factual question of -- that the Regs wrestle with and that economists wrestle with, which is, who actually is developing and contributing to the development of this asserted intan- -- of this intangible. So this -- there are trademarks, those trademarks are protected intellectual property. In this particular business, what contributes to their value? Well, we have the parent company, TSC, they're the ones spending advertising. In a plain vanilla, kind of, intangible analysis, the first thing you look to in a brand case is who's spending the money. Who's spending the advertising, they're the ones investing in the future development of the brand. You -- at arm's length, you only invest in something if you expect to get a return from it. Why would TSC be investing in the development of a brand if the brand is owned by TSCT? You also see that in terms of the functional contribution. There's nothing that TSCT is doing to promote the brand. TSCT is in

the, in the procurement function, it's not in the brand development function. The -- there's initial consideration, but this is one of the times when, probably, I've forgotten my own train of thought, in terms of how it ultimately feeds into the royalty that would paid by TSCT. But, maybe, I'll -- I'll leave it at that for now.

Q: Thank you. All right. If you did not have the concerns about which entity had the, had the intellectual property, what would the value of that intellectual property be?

And that was what I was gonna start to ask you to -- incase you wanted to go there next. So, I'm sorry, that's why I jumped in and -- I ---

A: No. I think -- I'm sorry. I ---

Q: --- didn't mean to interrupt you.

A: It wasn't going to the next -- but my -- the rest of my thought is relevant to that, because this does go back to this notion of the developer. So, in the retail setting, you have my opinion based on my study of how retailers actually grow and what it is that, actually, consumers rely on for that brand. It is very

different than a consumer brand. How do I know this? I know this by -- based on the types of advertising that are -- that is done at the TSC level and in other retailers, primarily, circular advertising. One of the -- one thing that the -- that a retailer wants to do is to ensure that customers come into the store and shop for particular products. So, there is much more of a -- it's less than, kind of, a lifestyle brand like Coca-Cola or Apple, or whatever your favorite consumer brand is, where there's some broader messaging, it's a broader -- actually, a product characteristic that you're trying to convince consumers of.

Here, you're trying to inform customers that you have this store, it has a reputation for quality, it has, you know, great customer service, and I can attest to that. Great people in that store that I went into. And so, what is creating the value of that? That value of ultimately customer goodwill, which is intertwined from an economic perspective with the value of the trademark, it's that shopping experience that the customer has when you walk into that brick and mortar store. And if

that's a good experience, then you're gonna feel more disposed to coming back there, and frankly, you're gonna be more disposed to paying a little bit higher price there than at the Walmart that's about a 20-minute drive away. And so, you're more likely to frequent that store and generate higher profits for the store.

Q: All right. So my next question, which I think I asked last, last but it may not've been articulated well. So, what is your position on what the actual arm's length price would be if you didn't have those other concerns for this intellectual property? Like, do you have a number? Did you determine what the proper arm's length charge would be?

A: Well ---

Q: And you can explain it after ---

A: Sure.

Q: --- but I want to know ---

A: Zero.

Q: --- first, if you have a --- okay.

A: So, I have a zero -- my number is zero because it is inextrip- -- inextricably linked to the facts of this case. You cannot say, what

would, what would a royalty be ---

Q: Hold on, hold on, hold on. I've asked you a hypothetical, so. And you can say, I can't answer that hypothetical, but I just want you to answer and then you can explain.

In the hypothetical, what is your position on what the arm's length price would be for the use of the IP if you had no other concerns about what entity was holding the IP that is at issue in this matter that is held by Texas?

A: Well, I ... Well, the trouble is, you just said, IP held by Texas. If you want to ask me the question in a purely ---

Q: Oh, I'm sorry.

A: --- hypothetical ---

Q: Yes, a pure hypothetical ---

A: Okay.

Q: --- held by X entity.

A: So let's say, there is a retailer out there that is licensing its brand value -- its, its name ---

Q: Wait, hold on. Hold on. I think you're changing my hyp- -- like, hypothetical. Let me make sure we're on the same page. I want you to price the actual IP that is at issue. What

I'm saying is not a concern, is where that IP is. So, do you have a value, an arm's length price, for the IP that is at issue in this case?

A: No. I can tell you the ranges of numbers that I've seen, but I've not done the analysis in this case ---

Q: Thank you.

A: --- to determine that hypothetical royalty.

THE COURT: What would that range of numbers be?

A: Anywhere between a low of zero, or zero point -- like a very, very small royalty rate, up to maybe two percent in terms of an ongoing royalty for -- unless there was something really unusual, like you -- as that is one of the tru- -- the challenges of these notions of retail trademarks, is you don't get very good comparable observations. So there are other types of intellectual property where I've been able to find reasonably good ones, so back to my pharmaceutical-type technology licenses, you get a -- you can get a lot of great licenses because there's a lot of very active licensing that goes on in the pharmaceutical world. So you can see royalty rates of 25 percent even

for -- and, and more. 30 -- I've seen in some cases I've testified. For trademarks on a product you can see things in the range of, again, between five and eight percent there -- but these are huge ranges, it really depends on the profit potential of the intellectual property. Retail stores, you don't see it because, why would somebody license another retailer's name? It's only -- you know, it's a very unusual set of circumstances, and that's one of the reasons why I think PwC simply didn't find any reliable comparables. So as a, as a rule of thumb, that's where I said somewhere -- it's certainly no long -- no higher than two percent. Sometimes economists refer to this as like a bear-ownership royalty, you sometimes see thrown around. I still think you need to have an evidentiary basis for that because it could be zero, because there might not be any profit potential, and those back to ---

THE COURT: Okay.

A: --- and that goes back to the language of the Regs, is it has to have, kind of, the profit potential to support a given royalty rate.

Q: But you did not do that analysis in this case to determine where within that range it would fall?
A: No. Oh, well, I mean, so you just said, in this case. In this case, I did not -- I did my analy- -- did the analysis of the PwC royalties. Given the facts of this case I consider the appropriate royalty to be zero, but I did not do a further analysis to determine what would be a royalty if it had been licensed to a third party in a different -- if PW -- if Tractor Supply were to license it to a -- through a third party, for example.
Q: And what method did you use to value the functions performed by TSC of Texas under the inventory procurement agreement? And you can explain after, but just say which method you used?
A: I'm sorry, to evaluate the inventory procurement?
Q: The function under the Inventory Procurement Agreement.
A: Oh, I'm sorry. What -- I'm, I'm -- you throw me -- you throw me sometimes when you call it inventory procurement, because I keep thinking

of it as a procurement service. So you're asking me, what analysis I did ---

Q: Yes.

A: --- to analyze the functions?

Q: Which method did you use?

A: Oh, well -- so, there's a difference between a me- -- so a method to analyze versus the functional analysis. The functional analysis ---

Q: I want ---

A: --- is pretty ---

Q: I want to know the method.

A: Sure.

Q: I want to know, which method did you use to determine the arm's length price that should be charged for the functions performed under the procurement agreement?

A: So, I -- my view, that it should be analyzed under the dash 9 version of the -- under the dash 9 Section of the Regs, which refers to the services, because I think I may've said earlier that, you need to first figure out what it is you -- the character of the transaction. It's a provision of procurement services, as a service, as an administrative service, those

are governed by dash 9. Dash 9 provides various methods under which those services should be priced, some of them -- and depending on the type of administrative service, some markup is appropriate, and that's why I said, at most, you would apply a -- you could apply, potentially, a CPM-type analysis to derive a markup, that's why I have thrown out the number of like a 10 percent markup on the 13 million dollar of cost. I didn't do a -- I have a -- an imperfect set of procurement comparables that showed that two percent margin, that -- even there, it's not clear the extent to which those have -- are selling inventory versus provide -- simply providing a service, but I would say, consistent with what I've done in my previous work, generally, what I would do is, look for broader service providers and use something that is in this range of 10 percent. Usually, it just doesn't move the needle that much, whether it's -- if you're compensating a service provider, if it's a procurement-specific set of comparables or some other broader administrative set of comparables, because the number you're applying that

percentage to is just the cost of the service, not this -- so, 13 million dollars in our case, not three billion dollars of inventory.

But I should emphasize, and I think said in my earlier testimony, my charge is not to recalculate the transfer prices, do an income adjustment like I would do in another case, but really to provide my opinion with regard to -- the extent to whether the separate reporting -- whether the transfer pricing was correct, and whether combined income -- I'm sorry, combined entity reporting would more accurately reflect the price that you would obtain under appropriately performed transfer price than the way the separate reporting -- separate entity reporting that the Company's applied.

Q: So, in other words, are you saying -- and I think my scribble says, dash 9 is the Regulation for services?

A: Yes.

Q: Yeah. So -- hold on, one second. I'm gonna pull it out just so we have it ---

A: Sure.

Q: --- in front of us.

A: Okay.

Q: All right. So is this the Regulation that you were referring to?
A: Yes.
Q: Okay. All right. So, the arm's length amount charged in a controlled services transaction must be determined under one of the methods provided for in this Section. Which method did you pick under this Section?
A: Well, again, I think the method that would be most reasonable to apply would be the -- it has a, it has a CPM reference in this one as well. So, again, it's still a method under the dash 9 Regulations, but you're still looking to comparable companies to benchmark that particular service.
Q: Okay. So did you do a comparable profits method analysis?
A: Well, I did, with regard to my procurement comparables. So, I think I was, I was doing that both from the perspective of evaluating -- if you would -- or even if you were invol- -- evaluating as a product transfer under the dash 4 Regs, I think that's the right way to do it. Conceivably, that could be applied here, but like I said, I would generally -- if I were

doing it from scratch ---
Q: Yes.
A: --- I would probably go back and look for companies that are, like administrative services providers, that's how I've done it for other, kind of, pure services providers.
Q: So you did it for the comps, you did not do what would be considered a full-blown, from scratch, comparable profits method analysis?
A: That's correct.
Q: Okay.
A: I -- you've heard -- you heard my other testimony about ---
Q: Yes.
A: --- the comps that I did, I don't want to ---
Q: Yes.
A: --- repeat that.
Q: Yes.
THE COURT: Why didn't you do it?
A: I'm sorry? Why did I, or why did I not?
THE COURT: Why did you not do it?
A: Because the -- well, I was not asked to effectively recalculate the income adjustment, so. In other tax cour- -- in Tax Court I'm often asked to provide my opinion as, what is

the, literally, the -- to the penny, the tax adjustment that is -- that the Commissioner is proposing in a particular case. I was as- -- my -- the scope of my testimony was really to review the Transfer Pricing Study of the ---

THE COURT: I know, but wha- -- wouldn't you need to know the price in order to make your evaluation?

A: I think -- that's why I called it -- I -- that I have, I have concluded, to a reasonable approximation. Like I said, the 10 percent number, if you apply a 10 percent number, which I think is the outer bound of what I would apply, a 10 percent markup to -- based on the other studies that I've done, that's what I would, I would think would be outer bound of the ---

THE COURT: And by outer-bound, you mean, that you would -- the most that you would come up with, is that ---

A: Correct.

THE COURT: --- what you're saying?

A: For, for a procurement service you would, generally -- the outer bound would be a 10 percent markup on the cost of the service, on

the 13 million dollars, and I ran through the math -- maybe, I did it -- I don't know if I did it too quickly, but just to satisfy myself that the -- because you've got administrative services back and forth, the procurement provided by Texas, the administrative services, which is also at issue here, transaction -- I believe it's transaction two that the Department referred to, if you apply that 10 percent to all your transactions, and also using the same 10 percent the Taxpayer's using for the outbound provision of employment services to Michigan, those all net out to a number that is reasonably approximate to what you get under combined entity reporting.

You can do the math, it's a lot of detailed numbers. You can go through a lot of expense to develop that perfect comparable set, but you're still coming up with the same number.

THE COURT: And the 10 percent would be about like 130,000, is that what you're ...

A: No. Well, it's -- you -- that's where you -- so, I have to start doing some ratios. So, 10 percent times 13 million is 1.3 million, but

remember ---

THE COURT: Oh, it was 13. I'm sorry, yeah.

A: Right. So it's 1.3 million of profit that Texas should get, the markup that they should get in total. But Texas also, is benefitting from those procurement services as is Michigan, so the Taxpayer would then bear like -- I would think a reasonable estimate would be 80 percent. 80 percent is the -- TSC's share of the Company's total sales. So, if you allocate out that 1.3 million dollar markup to TSC based on sales, you're about at a million dollars, rough numbers, of markup ---

THE COURT: How many ---

A: --- that goes the other way, that goes outbound. Then you got to figure out the markup that comes inbound from TSCT, and that requires going through that long list of administrative services that we went through in transaction number two, where it's the -- there're certain of those transactions, that generally you would not consider -- you wouldn't generally apply a markup to, like an accounting function, other ones that you most definitely would, the advertising function.

So, you'd have to go through and identify those, even if you did -- and this is like 80 million dollars worth of expenses. So the question is, what portion of that 80 million dollars are you gonna tack this 10 percent markup to? I assume -- again, assu- -- using 10 percent as this outer bound to that number, so. And then, allocate that out to the cost -- the income that TSC should be earning from both Texas and from Michigan, because it's the provider of these services to Texas and Michigan. They benefit from the MIS -- from, from their IT department.

THE COURT: So you started with 1.3 million, but you're saying that it would get culled down as you went through all these other analyses?

A: Correct. That you -- then it gets wiped out by a charge that's owed back by ---

THE COURT: All right.

A: --- the -- by Texas to ---

THE COURT: I understand.

A: And then, also, that outbound charge that we -- the actual charge we saw was about two million dollars that, that came back to Tex- -- to TSC from Michigan. It was like a 25 million dolla-

-- I don't know if you recall, about a 25 million dollar, more or less, charge that came back for the Michigan employees that came, that came back to TSC, embedded in that is like a two million dollar markup. So on net, TSC the parent company, is a net provider of services to the group, therefore the amount of profit that it would earn under -- applying this dash 9 version in the Regs should exceed or at least, or at least approximate the amount so that that net should all wash out in terms of apply- -- if you were to apply a combined entity apportionment, you'll get the same thing if you -- as if you didn't apply any markup and just allocated ---

THE COURT: Well, when you ---

A: --- everything on cost.

THE COURT: When you say wash out, you mean zero?

A: Correct. That -- the, the net profit between them is effectively -- should be something close to zero.

Q: So just to make sure I'm clear, under this Regulation is, you said, the comparable profits method, is that the -9(a)(5), is that what you ---

A: Correct.
Q: --- started to use?
A: Correct.
Q: And you sa- ---
A: I mean -- when you said -- I didn't hear what you last said. Is that, what I would -- would use, or is that what I did use?
Q: Is that what you did use?
A: It -- like I said ---
Q: I said started to use, because I ---
A: Right.
Q: --- thought what you had told me, was that you used it to be- -- with the comparables, but that you didn't finish out the analysis because you hadn't been asked to do that.
A: I, I would say if you want to look at my -- think of my analysis of the, of the, the procurement comparables as, effectively, a first stab at that, you could. I, I was thinking that, primarily, more in that dash 4 section, you could use them here. I think it would require, kind of, further -- if I were doing this from scratch, I would've just gone straight to service providers instead of the procurement alone. The procurement comparables

I think are very helpful, because they give you a sense of what third parties actually earn for procurement. How much -- is this a really, super valuable thing, that you earn lots and lots of money, or not? Or is this more of a -- kind of a plain vanilla kind of, kind of service. But when you come down to, literally, the application of the Regs, I probably -- if I were to be asked to -- either for a documentation study or in court, if my job was to come up with the number to put on the tax return, whether that was gonna go into adjustment that was gonna be imposed by a court, I would go through and develop a set that was based on this set of service pro- -- administrative service providers, and again, based on analyses that I've done as recently as the past year, I expect 10 percent would be the outside bound that I would find.

Q: And you say you expect that. Is 10 percent -- do the Regs prohibit it from ever being more than 10 percent?

A: No, not at all.

Q: Okay. Do the Regs have any outer bound?

A: No, they don't have an outer bound. They --

yeah, they, they specify certain ones that -- certain services that don't need to be -- were you're -- a taxpayer doesn't need to apply a markup, but they don't specify, kind of, an outer bound.

Q: Okay. So, you determined -- and let me restate this. You were not asked to do the further analysis to determine where in the -- I, I thought I understood from you earlier, that 10 percent was the outer limit for the Reg's purposes. I think I misunderstood ---

A: No.

Q: --- that.

A: No, not at all. It's, it's the outer bound of what I would expect to earn, based on some of my prior work.

Q: But you didn't actually do the analysis to determine what it should be?

A: No. Not all the way to that end point. I did the, what I'll just call the middle point, that two percent margin that I observed for some of the -- for the Li and Fung procurement comparables. Satisfied my -- gave me confidence that the number that I'm gonna get is not gonna be more than 10 percent.

Q: Okay.

MS. GEER: Bobby, can you pull up the slide 12? Of the -- of DeRamus's Report -- I mean, presentation? If you don't have it we can just pull it ---

MR. STREISEL: Do we have it?

MS. GEER: --- we can just pull it out of ---

MR. STREISEL: I don't know if we have a copy.

MS. GEER: I thought I gave you the slides at one time.

MR. STREISEL: These?

MS. GEER: Yeah.

(Whispering.)

MS. GEER: See if it's in there. If it's not in there, I must have it. Apologies, Your Honor.

MR. STREISEL: Yeah, I got it pulled up.

THE COURT: No, that's fine.

MR. STREISEL: Well ...

MS. BUCKNER: Do you need the Elmo, Bryson?

MS. GEER: I do need the Elmo, please. Thank you.

(Whispering.)

MS. GEER: This -- I know it's not showing, but this is slide 12 from Dr. DeRamus's PowerPoint.

A: And, and if you could show the source on it as well, that'd be helpful.

Q: Ah. I was having trouble getting it smaller. This is -- I'll try this thing.

MS. GEER: Oops, that's the wrong way, sorry.

Q: There we go.

A: Thank you.

Q: Is that good enough?

A: Yes.

(Respondent's Exhibit Number 33 was referenced at this time.)

Q: All right. This slide in your presentation talks about localization. Did you hear Ms. McKeown's testimony that the Inventory Planning Team is responsible for looking at the different store locations, their climates, their geography, determining and finding and purchasing what the stores in those different geographic areas might need, and she gave some examples of finding -- or doing more beekeeping items in Oregon stores, more horse feed in Texas, more snow blowers in Colorado, did you hear that testimony?

A: If I could ask you to ---

Q: Yeah.

A: --- rephrase who exactly she was referring to? The, the -- in the procurement function?

Q: Yes. In the procurement function.
A: Yes. I recall her saying that, yes.
Q: Okay. And did you also her test- -- testimony -- actually, hold on, one second. I think I skipped one. Oh, no. All right. Did you also -- that's all I wanted to ask about that one, I'm sorry. I'll take it off.

Did you also hear her testimony that the data analysis team reviews and evaluates the SKU data to see what the customers are buying versus not buying and tail- -- tailoring the inventory to that? Did you, did you hear that testimony?

A: I did.
Q: And did you understand that TSC of Texas employees were doing that function?
A: I do. If I'm not -- and I also, based on my review of the employment records and the job descriptions, and even the PwC 2012 Functional Analysis and Transfer Pricing Report, which we haven't really discussed, I concluded that it appeared to be more of a -- that data analysis function would be -- was pretty much across the board. That -- I understand that there is a significant amount done -- of that that is done

by the buyers, but that there is a broader, as you would expect, a broader data analysis -- there's broader data analysis that's going on up and down the organization, including the planning folks in the store, the people who are deciding where to put stores and the strategy folks as well.

Q: But you- ---

A: And that there's a broader infrastructure, a huge -- actually, I shouldn't say huge, a very large investment that the Company makes in that data infrastructure so the -- to provide the data to the people doing the analysis. And that infrastructure is a TSC expense, that's part of that administrative service that they provide.

Q: But you're not disputing that TSC of Texas employees also contribute greatly to that function?

A: I don't dispute they, they perform that function, correct.

Q: Okay.

A: And that they may do that as a regular part of their business.

Q: And I think I heard you say that, you agreed

the other day that exclusive brands are keeping the customers returning, did I hear you right?

A: I don't know if I said keeping them -- their -- them returning, I said their satisfaction with their, their shopping experience, the customer service, the people they interact with, as well as the products that they buy, certainly. But -- and the private label brands, they're hap-- any, anybody is happy with the, kind of, the value of the -- if they buy a product that's priced at a price point that they like and that performs to their expectation, that's gonna make a happy customer.

Q: Did I also hear you earlier in the week that consumables, edibles and usables, I think we called it CUE, that those kind of bread and butter items, like dog food -- and that having that right mix of products are really bringing people in the stores?

A: Certainly, having that format is, as I understand it -- and not only based on what I understand about the product characteristics and about the buyers' behavior, but also the analyst reports were helpful in that regard to describe the importance of that CUE business as

driving that -- 'cause it's a repeat business. It means ---

Q: Right.

A: --- your customer's not gonna be an episodic customer.

Q: Right. And did you hear Ms. McKeown's testimony that, between employees from the Inventory Planning Team, the buyers' team, Global Sourcing Team, Data Analysis Team, that those folks are the ones that are determining, finding and purchasing which CUE products the store needs and figuring out that right mix of types, the brands, the styles, the volume, the timing of delivery, etcetera, that those stores need? Did you hear that testimony?

A: I heard her say that, yes.

Q: Okay. And is it your understanding that, TSC of Texas employees are the employees that are performing those functions?

A: I, I would say, that the sum total of the information I've reviewed including, again, back to the employment records and then that PwC 2012 Study, I would say, that -- I would expect that there's, kind of, a broader participation by others in the organization in

that function. But I -- and I think it even goes all the way down to, kind of, the overall strategy of the Company.

Q: You're not disputing that TSC of Texas employees perform all the functions that I just listed, do you?

A: I'm sorry, could you go through the list one more time ---

Q: Yeah.

A: --- 'cause there were a couple that, that were kind of -- the ones that were making my ears perk up.

Q: Okay. So, I talked about employee -- first, I listed the, kind of, the teams that they would've been on, so I said employees from the Inventory Planning Team, the buyers' team. I listed the Data Analysis Team, but we've already discussed that, so you can not address that one here and we'll go with your earlier response on data analysis.

A: Okay.

Q: The gl- -- and the Global Sourcing Team. So those are team members.

A: Okay.

Q: And then functions I listed, determining,

finding and purchasing which CUE products the stores need and figuring out the right mix of types, brands, styles, volume, timing of delivery that those stores need.

A: So, I would agree with regard to the procurement, with regard to identifying the vendors, and probably, with a lot of specificity of that. Ultimately, this is a -- an integrated headquarters team. There's a broader -- there's a whole Distribution Team on the, on the TSC side, on the corporate side, so the people that are responsible for monitoring the inventory levels. So, I think a lot of it, you were talking about was like the amounts that are needed. There is ---

Q: Maybe, I could -- oh, sorry.

A: So I, so I think, I think there's a -- kind of, think a high level question of who's entering the contracts. Absolutely, the folks in the procurement, there's -- they're the ones who are negotiating with the vendors. There are -- and I would assume there are -- these are EDI, Electronic Data Interface, kind of, ordering systems, so ---

Q: Right.

A: --- I expect there's some automatic ordering, but I also know that there's a inventory management function on the TSC side of the house. So there's a lot of -- if you'd, if you'd stopped at the procurement and the, and the selection, I probably would've said yes, but the moment you, kind of, keep going down that list ---

Q: Yeah.

A: --- I ---

Q: Let me give you another clarification and see if that helps. If I say ---

THE COURT: Well, were you through with your answer?

A: Yeah, pretty much. It's just that there is ---

Q: Okay.

A: --- there is a ---

Q: I'm sorry, I didn't mean ---

THE COURT: Yeah.

A: Sure.

Q: --- to interrupt.

A: Sure.

Q: I thought this might help you, 'cause I could see you were struggling with how I had identified things and this might help.

If I cut the time off at when the

inventory gets to the stores. So, I know you were, you were talking about inventory management after it gets there?

A: No. I was actually thinking about inventory management when the -- even at the distribution center. So they're ---

Q: Oh, okay.

A: The distribution is a function performed by TSC.

Q: I see. With that exception, is there anything else prior to the inventory getting to the stores that you would say is not Texas, or is performed by someone else besides Texas?

A: Well, there's finance people involved, right? There's accounts payable people involved. They're responsible for cutting the checks for the inventory. I would think the CFO is the one that has ultimate responsibility. There is ---

Q: Okay.

A: --- the head of the whole merchandising procurement function, back then Mr. Barbrick, who I would think had some responsibility for all this as well.

Q: Okay.

A: I do expect that there is a lot -- based on the -- Ms. McKeown's testimony, that there is a lot of that -- particular that vendor interaction, that's gonna happen primarily at the -- on the, on the TSCT side of the house.

Q: Okay. Thank you. And you talked about the restructure. Did you review the PwC Memos to TSC regarding the restructure as you were evaluating in this case?

A: By the Memos, it'd be helpful to see the documents. But I did review some documents, yes.

Q: Okay. In those documents did you see any documents that summarized TSC's business reasons for the restructure?

A: I do recall some assertions about those, yes.

Q: Okay. Which ones do you recall?

A: So, something about, there was a limited liability protection clause, there was a -- I believe -- I can't remember if there was a facilitation of future expansion in there as well. I believe there was a -- you know, more accurate financial reporting, the one I took, probably, the biggest issue with. And -- I believe those are the big ones that I recall.

I could sit here and think further, but I think just for efficiency of time, those are the ones -- main ones.

Q: Was another one enhancement of the overall financial performance of the company?

A: Yes, I di- -- that was one of those that I recall seeing.

Q: And do you, do you not believe that limited liability protection was a concern of Tractor Supply?

A: So, certainly, I would expect that every company is concerned about liability protection. I think the question is, whether the transaction had a -- any significant impact on -- and particularly, in terms of the procurement transaction. So, maybe, setting up Texas, and maybe putting the employees in -- of Michigan in -- and keeping them in TSC, may've had some limited liability issues. I don't -- I -- my, my focus was primarily on the procurement transaction. That was a contract that was signed by officers of TSC, the parent. There was not a separate -- no, there was no person from TSCT in that procurement contract.

In a -- in any kind of work that I've done

previously on corporate veil-piercing-type activities, you need a lot in order to protect from kind of these -- those kinds of -- I think, particularly, if it's product liability issue or a -- or even, I would think, a vendor, a vendor dispute, I would think that the vendor's going after the TS- -- the, the parent corporation, based on the fact that the parent corporation's the one that's paying the bills, even if TSCT is a nominal sign -- signatory on those contracts. So I -- that's why, based on -- again, I'm not a lawyer, I'm not offering you a legal opinion, but based my experience as an Economist, based on that specific way in which it was restructured, and particularly -- and also the fact that, like I said, the same parties are signing the -- or parties from -- individuals for the same party are signing the contract as if they were independent parties and there's no independent Board of Directors, there's, there's none of the other indicia of independence that I would've -- that I've seen in some of my other work on these issues, I did not, I did not conclude that that would have a -- any significant liability protection for

those issues.
Q: Now, I think you said earlier you're not a lawyer, is that correct?
A: That's correct.
Q: So you would not be able to evaluate or know what the answer is, as to whether -- what Tractor Supply did in, in terms of executing their corporate documents, whether that would provide liability protection or not, you would not know whether it's affected, correct?
A: I'm not offering a legal opinion as to that. I'm just saying based on my own experience.
Q: Okay. So ---
A: All, all the factors were things that were more economic related, that was one that is a legal issue.
Q: Right. So ---
A: So, I -- but I -- I'm providing my view of that -- particularly, because it does have potential commercial impacts, and it's come up in some of my other transfer pricing work where there is an issue associated with different parties interposed in a relationship, and how does that change the, kind of, the liabilities and the obligations of the different parties. So, I

wrestled with that issue, even if -- because it has that implication for transfer pricing, even if at the end of the day, it's a legal determination for the Court to make.

Q: And my question was, did you not believe that Tractor Supply had legal concerns about legal liability?

A: As I said, I'm sure they had concerns about legal liability for -- you know, every company has generalized concerns. I did not consider those to be -- particularly, with regard to the procurement factor -- the procurement function, I did not consider those from my view as an Economist to be significantly impacted.

Q: But you had -- as I understood what you were saying earlier, you said the reason that you thought that they must not have really had that goal is because it wasn't affected. Is that what you said?

OBJECTION:

MS. WOOTEN: Your Honor, I'm gonna object to this line of questioning. She's asking him what she -- what he believes the Company is doing from a legal liability protection standpoint, but then on the other hand saying, he's not an

attorney and he can't make a -- he cannot make a legal conclusion based on that. So either she can -- he can answer it in the, the fashion of an attorney, or he's not -- he can't answer the question that she's being posed.

THE COURT: Well, she's on cross, but the -- it appears to be asked and answered to me, but ...

MS. WOOTEN: We'll move it up to that, too, asked and answered.

THE COURT: Well, I'm, I'm gonna overrule the ---

MS. WOOTEN: Okay.

THE COURT: --- first one, right now.

MS. WOOTEN: All right. Thank you.

Q: Let me restate it, just to be clear.

You're not disagreeing that Tractor Supply had a purpose going into this restructure to address their concern of limited -- of liability protection. Instead, you're say- -- let me just answer that -- ask -- let me ask that ---

A: No. I'm not offering an opinion as to why they did it with rega- ---

Q: Okay.

A: --- for legal liability reasons. I've seen lots of documents that talk about the savings

and that documented the tax savings, and I've seen statements in that same document that highlighted a number of other things that I -- the, particularly, the economic factors that I was able to review in some -- like, maybe, with a greater focus on my economic training. The legal issue is something I just -- I don't know where they were in their legal position -- in their, in their concerns. But, like I said, I don't think that it -- at the end of the day, the procurement contract -- or the -- or moving the procurement people and drawing the dotted, dotted line, based on my own past experience, not as a legal expert, that does not -- would not appear to have affected that in any significant way.

Q: And you said you saw reasons in the documentation from PwC that Tractor Supply had tax minimization -- I can't remember if that's the exact term you used, but tax reasons for considering the particular structure ---

A: Yes.

Q: --- did I hear you right?

A: Yes.

Q: But they also stated the four other goals that

you listed?
A: Correct.
Q: Okay. And you don't have any factual basis to say that those were not their goals?
A: I'm not saying what was in the minds of the people who did the, the actual transactions. All I'm saying is, the reasons that they have asserted, from an economic perspective, they would appear to be more pretextual than actually substantive. Like I said, there is a -- there is no -- based on my understanding of the business and my understanding of economics and my analysis of other companies, I just see -- I know the accounting was made more complicated, I know as a factual matter that the financial reporting was made more complicated, that the fin- -- that financial reports that incorporated the transfer pricing would res- -- would result in less reasonable -- or less accurate business information of decision makers. I know in their ordinary course of business, the Company prepared financial statements that include -- or financial schedules, the performance stores, including the performance of stores in South

Carolina, that excluded the transfer pricing. So, I know those factors -- and also, with regard to the acquisitions, I know that there's no way in which hiving that off into a, kind of, a separate legal entity, facilitated in any way the Company's ability to integrate future acquisitions.

So there are, there are factual bases for me to say, are these -- and I think a reasonable basis for an economist to opine on whether the restructuring had any reasonable commercial effects, and even would've -- and one would've reasonably anticipated those, those effects to come about.

Q: In your experience, do Big Four accounting firms typically put -- state company's goals in their documentation of a restructure if they were not stated to them by the company?

OBJECTION:

MS. WOOTEN: Your Honor, I'm gonna object ---

THE COURT: I ---

MS. WOOTEN: --- to the extent that, if he knows -- he has personal knowledge of that.

THE COURT: Well, he can testify to ---

MS. GEER: If he knows.

MS. WOOTEN: If he knows.

THE COURT: If he knows. He can't speculate, though.

A: So based on my experience ---

THE COURT: I -- but -- even if it's experience, wouldn't it not -- if it's his experience, would it not be speculation about what CW -- or, or Pricewaterhouse ---

MS. GEER: PwC.

THE COURT: --- did in this case?

MS. GEER: He can ...

THE COURT: You can -- I'm, I'm asking you. I'm not ---

MS. GEER: I think it'd be ---

THE COURT: --- cutting you off.

MS. GEER: --- probative if, if he thinks that Big Four firms don't typically do that. I think that would be probative.

THE COURT: Okay. I'll let you ask it -- or ans- -- answer --

A: Certainly.

THE COURT: --- from that perspective.

A: So this is based on -- well, so the last time I worked at a Big Four accounting firm was back in 1993 to 1998, so my direct knowledge is

somewhat dated, although, I have reviewed transfer pricing reports by other Big Four accounting firms since then, and there's just generally a broader -- that companies -- Big Four accounting firms rely heavily on what companies tell them. I don't know the extent to which -- and they do that -- they rely on what companies tell them when they're doing their functional analysis, so the PwC Functional Analysis in this case, I expect was -- they were relying heavily on what the Company is telling them. In this particular document, I have no idea what their -- what they would put in there, whether they would put things that Company told them, or whether they would provide their own, their own views on that. So, it's really up to what they did factually at that time.

Q: Okay. Thank you.

MS. GEER: One second, Your Honor.

(Whispering.)

A: I -- I'm sorry. I should -- I should've said, I have seen many documents where, whether Big Four accounting firms or other planning -- particularly, in planning situations where

routinely the -- their advisors provide language with a view towards potential challenges. So, there's often the kind of language to help protect the company in, in the event of a challenge.

MS. GEER: Your Honor, may I approach the witness?

Q: I just want to show this document and ask you if this is what you would've seen that listed the business reasons?

MS. WOOTEN: Do you have a copy of it?

MS. GEER: Oh, sorry, yeah. I apologize, Nikki.

MS. WOOTEN: That's okay. It's getting late in the evening.

A: Yes, that's my recollection.

Q: Thank you.

MS. GEER: Your Honor, we'd like to introduce this as Petitioner's Exhibit 2.

(Petitioner's Exhibit Number 2 was introduced into the record at this time.)

OBJECTION:

MS. WOOTEN: Your Honor, I'm not -- if she can show me the relevance. I mean, she's handed me a document and asked if he's, he's seen it.

MS. GEER: This relates to the discussion we just had about had he seen the business purpose.

And he seems to want to minimize that it was really a purpose, and I think it's ---

THE COURT: Well ---

MS. GEER: --- relevant for me to ---

THE COURT: That's an awful thick document that ---

MS. GEER: I'm, I'm happy with just ---

THE COURT: Is this all related ---

MS. GEER: --- putting in the first page, but I just assumed that the Department would not be ---

THE COURT: Oh, okay.

MS. GEER: --- okay with that.

MS. WOOTEN: Your Honor, I mean, it was -- going back to day one, this is part of that PwC Memo that they said was not authenticated and we couldn't put into the record, so.

MS. GEER: Well, so she wants it in the record, so it's in the record -- (laughter).

MS. WOOTEN: This is part of it, but this wasn't the one that we, that we offered. I mean, this was part of what appeared to be a binder, again, we don't know. But if she can authenticate it?

THE COURT: Well then, I always kind of do what's good for the goose is good for the gander kind of thing.

MS. GEER: I mean, he just said that he -- what?

(Whispering.)

THE COURT: Just to make ---

MS. GEER: May I consult with ---

THE COURT: Ma- ---

MS. GEER: --- Ms. Wooten and see if we can reach an agreement on that ---

THE COURT: Okay. 'Cause I was gonna tell you last time when we went through it was -- that the person identified it, but then there was the underlying issue of authenticating ---

MS. GEER: Right.

THE COURT: --- it even though you identified it. We're there again.

MS. GEER: (To Ms. Wooten) would you be willing to agree to this one if we let your one that you wanted in in? Of course, I'm horse trading here, Your Honor.

(*Laughter.*)

MS. WOOTEN: We're horse trading?

MS. GEER: You want to think about it and we can deal with this ---

MS. WOOTEN: Yeah.

MS. GEER: --- as a housekeeping matter?

MS. WOOTEN: Yeah.

THE COURT: I'll keep the record ---

MS. GEER: Is that ---

THE COURT: --- open on that ---

MS. GEER: Thank you.

MS. WOOTEN: Okay.

THE COURT: --- until I have a response.

MS. WOOTEN: Thank you, Your Honor.

MS. GEER: Oh, and, and Nikki, just to be clear, we would want the full -- the whole ---

MS. WOOTEN: The whole thing?

MS. GEER: --- of yours, as well.

THE COURT: Well, y'all can negotiate at this point.

MS. GEER: We can negotiate that.

MS. WOOTEN: Okay.

MS. GEER: Yeah.

MS. WOOTEN: All right. Got it. Thank you.

MS. GEER: Let me just get that out of my way here. I'm just trying to clear off my ...

(Whispering.)

MS. GEER: All right. I'm gonna stick another one up, if that's okay?

THE COURT: Yeah.

Q: Can you see that, Dr. DeRamus?

A: Yes.

Q: All right. And you suggest a 10 percent markup on the cost of procurement, correct?

A: I said that that would be what I would expect, yes.
Q: Okay. And ---
A: As I've -- I mean, I don't want to repeat my opinions. I think my -- the record's clear.
Q: Right. And this references -- this slide, which is -- I can't see that, is that 28 or 26?
A: It ---
MS. GEER: Can y'all see?
MS. WOOTEN: 28.
MR. STREISEL: 28.
MS. GEER: Okay.
Q: It's your slide 28 and it references Joint Exhibit 52, correct?
(Respondent's Exhibit Number 33 was referenced at this time.)
A: Correct.
Q: All right. And your Demonstrative begins at row 60100, is that correct?
A: Oh, I'm sorry. In terms ---
Q: The row on the document.
A: --- in terms of the, the GL account, the general ledger ---
Q: Yes.
A: --- account number?

Q: Yep.
A: Yes, let me get my glasses. I'm sorry.
Q: Oh, no, that's fine.
A: I left, I left them back in my thing -- but I think I can see it.
Q: Okay. All right.
MS. GEER: Bobbie, can you blow-up the Exhibit? Actually, I need the one that you highlighted already.
MR. STREISEL: You want me ---
MS. GEER: Or does this -- yeah.
MR. STREISEL: --- to scroll up?
MS. GEER: Hold on a second.
(Whispering.)
MS. GEER: Oh, can -- yeah, yeah, yeah. All right. Thank you.
Q: All right. Can you look at these -- so, so on this as -- where we're looking here, lines 60100 is where what we just looked at starts, correct?
A: Correct. Is this -- I'm ...
Q: Do you need a copy closer?
A: No, no. I'm just, I'm just trying to benchmark it relative to the document that -- is this the, the document that I -- I'm citing?

Q: Yes.
A: Okay.
Q: Yes. Okay. So you're slide began at line 60100, is that correct?
A: Correct.
Q: Okay.
MS. GEER: And then, can we scroll up?
Q: And so I'd like you to look at -- I don't know if we can see it all one slide.
MS. GEER: Can you, maybe, push your tab ...
MR. STREISEL: I can probably hide some stuff?
MS. GEER: Yeah, just hide the ribbon.
(Whispering.)
Q: All right. So, do you see the rows that are highlighted in green?
A: Yes, I do.
Q: Okay. Would you agree that those are cost of procurement?
A: Absolutely not. That's the intercompany cost of sales. That's simply a journal entry, that is not actually a cost that TX -- that -- Texas never shells out hard money and hulls that inventory into its cost. That's -- I don't think that's appropriate to include in the cost base for purposes of determining the markup.

Q: Would you agree that those are booked on TSC of Texas' -- booked as expenses on TSC of Texas' financial records?
A: I, I would agree that's how they entered it in. I think we've been through the accounting ---
Q: Okay.
A: --- of -- that it is a journal, a journal entry, nothing more.
Q: Thank you. Would you agree that -- your position is, basically, that the procurement function is a routine service, it's just -- is not deserving of any type of premium profit, it's deserving of, at most, 10 percent plus -- over the cost?
A: It's appropriately considered an administrative service evaluated under the dash 9 section of the Regs.
Q: And if ---
A: This notion of routine is always, kind of, a freighted term ---
Q: Okay. I shou- -- I, I realized as soon as I said it I shouldn't, 'cause I know you have an issue with that, but you -- feel free to continue.
A: No, it's just that it ---

Q: Okay.
A: --- is a freighted term because it's typically used in this notion of the profit split in identifying routine versus non-routine functions, and even within the services Regs, the dash 9 Regs, it identifies certain types of services that are -- that may not -- where, where the taxpayer may not need to actually apply a markup, and simply allocate at cost, and other ones that it specifies should generally be -- where a markup is generally appropriate.
Q: And I think you said that the Li and Fung comparable was one that you're very familiar with and that you felt was reasonable to look at in this case, although you said, maybe, it was a little bit low. I can't re- ---
A: I don't think I said -- well, again, it's always a question of what are you, what are you multiplying your percentage by ---
Q: Right.
A: --- right? So they have a different -- I don't have complete visibility into what they're actually marking up and how much inventory they are carrying. So -- I mean, I can actua- -- I

-- if I spent more time through it I could go back and evaluate it. I recall them carrying some inventory, I just can't remember how much. So ---

Q: All right.

A: --- it is a -- I think it is a reasonable comparable, if one were to conclude, contrary to my opinion, that you would say, okay, markup the inventory. I don't think -- and so -- two percent is -- that's what I think is the outer bound, and -- of what you would ever use, but that's for a wholesale distribution function and even that procurement function, that's where it's real -- economists spend a lot of time in transfer pricing analysis in the -- in evaluating a procurement function, exactly, what is it? Is it, like, literally taking that procurement -- I mean, taking that -- that's the inventory in-house, deploying your own capi- -- the -- that entity's actual capital, and then engaging in more break bulk, or is it simply literally more of a purchasing agent function, where they're just entering in a contract on somebody else's behalf.

Q: And would you agree, that Li and Fung would

generally take direction from their clients as to what products that are wanting to either find and purchase or design and manufacture and purchase?

A: Certainly, becau- -- I mean, to the extent that their, their clients are telling them what they are looking for, but Li and Fung also has a significant design capability. So it has their own -- a pretty broad service component of what they do. It's not ---

Q: Right.

A: --- just order fulfillment.

Q: But Li and Fung is not getting inside of its customers' businesses and getting the knowledge of what's important to that business and reviewing the business's data analytics and seeing what's selling and not selling, seeing where the gaps are, seeing what works together, seeing what the geographic needs of all the locations are, following the trends and styles of that particular business, figuring out which ones will work best for their customers and determin- -- determining which new products they would want to develop, right?

A: I would say it does some of that, and maybe,

not oth- -- and, and not others. And, certainly, is not part of a company, it's a contra- -- it's contracting for that service, but these are -- again, it's a sophisticated company providing a broad range of services, so -- and they follow -- it's not like they are simply passively going out and dealing with manufacturers, they follow -- that's why they have a design service, is because they have certain views as to what's gonna sell and what's not gonna sell.

Q: Right.

A: So I think there's a broader range of things that they provide than the way you're characterizing it.

Q: Well, they provide to a range of businesses, correct?

A: That's correct.

Q: So they're not gonna know the ins and outs of every industry for every client that they're servicing, right?

A: Well, they will know the ins and outs of the apparel industry because ---

Q: Yeah.

A: --- it's my understanding, that's where they

primarily operate. They will know, probably, in pretty great detail the ins and outs of their -- some of their largest customers, their repeat customers, in terms of what has sold in the past. There's a -- I would assume there's a -- kind of, ongoing relationships given the volume of sales they make. This is not just onesie-twosies, kind of, ordering. So -- but they are not -- it's -- it is different being outside a company versus inside a company, obviously.

Q: Right. An apparel industry, that's, that's one line of business. Do you not agree that Tractor Supply has multiple types? I mean, they have hardware, they have feed, they have clothing, they have multiple lines of business, and that they're not just a simple apparel business?

A: I agree that they are not simply apparel. I wouldn't call it a simple -- that -- apparel a simple business. I would agree that they, they have multiple products that they sell other than apparel.

I should say, it's also one of the reasons why it's really hard to benchmark this

procurement function. It's one of the reasons why I think the only way to really do this in any reliable way is applying some kind of modest markup on the cost of the services, simply because you, you do run up against these data limitations.

(Whispering.)

THE COURT: How many more questions?

MS. GEER: Not many. If you want to take a quick break that'll make me even quicker.

THE COURT: No. No, I don't.

MS. GEER: I just need to sort through my papers. Aha, I finally found it.

Q: Doc- -- Dr. DeRamus, this is your slide 68.

A: Yes.

(Respondent's Exhibit Number 33 was referenced at this time.)

Q: So it says, consistent with the specified methods, an unspec- -- specified method should take into account the general principle that uncontrolled taxpayers evaluate the terms of the transaction by considering the realistic alternatives to that tran- -- transaction, including economically similar transactions structured as other-than services, transactions

and only enter into a particular transaction if none of the alternatives is preferable to it.

A: Yes.

Q: Do you, do you agree that it is permissible under the Regs to use an alternative method?

A: Certainly, it's permissible. It -- ultimately, it's a -- whatever method gets you the most reliable result.

Q: And did I understand, that you -- your testimony earlier, are you saying that, if you were not to consider the alternative -- realistic alternatives to both parties to the transaction?

A: Not in the way Dr. Andrade described it. Then -- the way Dr. Andrade described it almost made it a, kind of, a -- particularly, in evaluating like a trademark to be kind of a nonsensical kind of concept as it applies ---

Q: Can you just tell me what your -- sorry, I didn't mean to cut you off. I just want to know what yours is?

A: So in evaluating a -- particularly, an intangible asset transfer or a license of an intangible, the purpose is simply -- and this -- again, it's -- I -- this is a principle

that, that is quoted from the dash 9 Regs, but it appears, I'm pretty sure, in every section, or I know it's in the, in the intangibles section in the Regs and other places. But the general point again is, you don't -- a -- at arm's length, somebody with a valuable asset doesn't simply give it up for no consideration, they don't put themselves in a worse economic position as a result of the transaction. There could be, kind of, a fair exchange of value. So if there is a transfer or there is a license, then the amount that they, that they receive should be consistent with another -- in this -- either the profit potential of that particular transaction, or what they could obtain on an arm's length basis. But it's that -- it's particularly important in that, in that notion of a, of a change in a structure. In restructuring, in moving intangibles from point A to point B, or from one tax jurisdiction to another.

Q: So, I'm not, I'm not -- you might -- you may've answered my question, and I just didn't hear it. But -- so are you saying that you do -- you should look at both parties?

A: Not in that, not in that transaction side, because the whole point is the -- you have a function being performed by one of the taxpayers, and -- particularly, if that -- there's a reason that company has been -- that party had been performing that function, and then if you were gonna transfer that function overseas to a, you know, if I -- I'm engaged in a high profit procurement -- let's assume for the sake of argument, a super high profit procurement function that's generating all of these profits associated with the company, I, as an entity -- and an un- -- as in unrelated party transactions, I wouldn't say, hey, David DeRamus, why don't you take over this, this function for us and you agree to cover all of our costs, our 12 million dollars -- 13 million dollars of, of direct expenses for this function and we'll give you 450 million -- or 350 million dollars. I'd be happy to take that of- -- that deal, but in third party transactions, you don't see those deals being made, there's an economic irrationality to that. And with regard to the way I understood Dr. Andrade's point, was this notion that

somehow the parties are in this -- I'm not quite sure what the term of art would be. I know kind of a colloquial term, but where both parties hold a gun to each other head -- each other's head because somehow the -- because once TSC has transferred the trademark rights to TSCT, therefore it's forever obligated and held hostage to paying a 9.7 percent inventory markup, simply because it made that transfer and it bound itself in ways that it can't somehow undo. And that's the part where you just got to be clear, these are related party transactions often initiated by the tax staff where they put the terms in the -- in those contracts. And in a, in a international transaction, in a cross-border transaction, those aren't situations that the tax authorities simply say, oh, yeah, that makes sense. They, they evaluate those with an incredible degree of scrutiny, and they apply a lot of their -- well, as I said, lots of relief that tax authorities seek or adjustments they can seek under 360 -- §367(D) or §482.

Q: All right. So, let me ask it in a different way to see if I can -- make sure I'm

understanding you.

So, 2014, TSC of Texas is providing procurement functions, TSC needs to buy inventory for the sales to its stores -- for, for its stores, I should say, when you're pricing that transaction are you saying that it is improper to look at both of those parties' realistic alternatives? And if you could answer yes or no and then explain, please.

A: Well, in a context of evaluating that transaction at that, that point in time, it is appropriate to -- in a, in a, probably, a more narrow sense, yes, to look at both sides of the transaction.

Q: Thank you.

A: And if you'd like me to explain, I can.

Q: I'm good.

A: Okay.

THE COURT: (To Ms. Geer) if you're tearing off a question over there, I'm gonna throw a rock at you.

(Laughter.)

MR. STREISEL: It's five of them.

Q: Do you agree that under the combined unitary reporting method employed by the Department and

-- which eliminates intercompany transactions, that that results in zero dollars being paid to TSC of Texas for procurement, product development and the use of its IP?

OBJECTION:

MS. WOOTEN: Your Honor, I'm gonna object to the extent that she's asking him for a legal conclusion.

MS. GEER: I am not asking for a legal -- please, do not answer this from a legal conclusion. Just from an economic perspective.

MS. WOOTEN: Okay. That's -- that -- that's the magic language.

(Laughter.)

A: I think the net result would be close to what a -- just a straight cost allocation would be or, i.e. -- just simply because all the costs are being allocated out. You have an operating -- you're looking at the total income of the, of the Company and you're allocating kind of the income on a, on a percentage of sales basis, so that effectively everybody is bearing their pro rata portion of costs. So -- which means that TSC would be, in effect, reimbursing TSCT for the percent -- the -- its percentage

of costs associated with it for its function -- I'm sorry, with the procurement function. I would say, kind of -- is it -- it's kind of washing out a lot of detail, so I haven't gone through all the different ways in which that -- the, the -- all the costs would kind of wash out in that, in that calculation versus these detailed transactions the Company's doing, because it has these, like, back and forth transactions for the Michigan employee expenses, and then the ad- -- the portion of the admin expenses, some of those are being allocated on different factors. Like, this one's on the number of distribution centers. Another one's on costs. So I'm not quite sure which way it all washes out, but in effect, the net result would be Texas is compensated for the cost of those functions. And it would be the same -- again, back to my earlier example of a -- if you applied a small markup, because of the way the, the services are being provided back and forth among the entities, it would also provide that same result on a combined entity basis.

Q: So the cost, but no, no markup? It would be

zero dollars -- they would be reimbursed for their costs, but there would be zero extra dollars under a combined reporting method to Texas for it performing procurement activities, product development, and the use of IP, right?

A: As I said before, I think to a reasonable degree of approximation, you would get the same results if you allocated just the -- just allocated the costs so that TSC bore a share of the costs, or if you allocated a markup percentage, both on the procurement function and on the administrative services since they're both effectively very similar types of services.

Q: I'm not following you.

A: Okay. So, 80 million dollars of administrative ---

QUESTIONS BY THE COURT:

THE COURT: Can I ---

MS. GEER: Yeah.

THE COURT: Can I ask you a question?

A: Certainly.

THE COURT: So CWP [sic] did a 9.7 markup?

A: Yes, of inventory.

THE COURT: Oh, of inventory. It appears to me that

you would do a zero markup, is that right or not?

A: Well, you wouldn't markup the, the inventory, right, the only thing you would markup is the cost of the service, the sav- -- that 13 million dollar mar- ---

THE COURT: Well, they did 9.7 percent as the transfer cost, so that's what we've been dealing with, isn't it?

A: Well -- which -- but if -- but that 9.7 percent applied to a three billion dollar number.

THE COURT: Yeah.

A: Right. So, my approach would be to say, what are the actual costs incurred, kind of, these hard costs of these employees, that 13 million dollars.

THE COURT: So you wouldn't do 9.7, you would just do the actual costs?

A: Of the salary costs. I keep going back to that 13 million dollar schedule.

THE COURT: And then this here ---

A: So excluding this, this no- -- this notional transfer that happens on the -- for this intercompany -- this, this general ledger transaction where they kind of record this

three billion dollar number of the cost of goods sold, you would exclude that, you just focus on the actual hard costs of the procurement -- of the performance of the procurement service and mark that up -- you can mark that up but you -- what's -- back to your comment about what's good for the goose is good for the gander, you would also apply that on the administra- -- on these other headquarters services going ---

THE COURT: So you ---

A: --- outbound.

THE COURT: You've got the 13 million dollar, you would do 10 percent, 1.3 ---

A: Yes.

THE COURT: --- on the costs, but then that 1.3 would ultimately wash out. So, under your theory, you're -- it would all wash out to zero?

A: Well, to a reasonable approximation, yes.

THE COURT: Okay. That's what I'm wondering.

Q: And that was what I wanted, too. Thank you. That's all I have.

MS. WOOTEN: Your Honor, the Department rests.

ADDITIONAL QUESTIONS BY THE COURT:

THE COURT: All right. Well, I've got ... Did Dr. Andrade ever give a figure that was comparable to nine -- or, or not comparable, that replaced the 9.7 figure? 'Cause I didn't see it?

A: No, Your Honor, not that I saw.

THE COURT: Okay. That's all right. All right. You may step down. All right. I think we're through, so.

MS. GEER: I apologize for my ...

THE COURT: Oh, that's fine.

MS. GEER: --- taking longer.

CONCLUDING MATTERS:

THE COURT: That ain't a problem. I normally say that I want the proposed orders -- if nobody requests a transcript, that's very unlikely, that I would want it 30 days from the day -- today, but if you request a transcript, I want it -- proposed orders 30 days from the day the transcript is made available to you. Is that ---

MS. WOOTEN: Your Honor, may I have -- I've listened to Ms. Geer, but given the technical nature of this trial and the volume of testimony, we would respectfully request 45 days instead of 30.

MS. GEER: I mean, I would like 60, so I will certainly ---

THE COURT: Yeah, let's go 45.

MS. GEER: It's just a lot.

THE COURT: 'Cause I've got a staff attorney that's about to go out on a maternity leave.

MS. GEER: It's all your fault.

MS. BUCKNER: Sorry.

(Laughter.)

THE COURT: No, we'll go 45 and I'll just see.

MS. WOOTEN: And I think, Your Honor, for the record, both of us have requested a transcript.

THE COURT: I, I knew that.

MS. WOOTEN: Okay. 45 days from the receipt of transcript?

THE COURT: Yeah.

MS. WOOTEN: Thank you.

MS. GEER: And I -- may I tell the court reporter that she can take as long as she wants to issue the transcript?

(*Laughter*.)

THE COURT: Yeah.

MS. WOOTEN: When -- oh.

THE COURT: I will say, y'all, in drafting your proposal, having heard this case, I will tell

y'all, I see Professor Pomp's point that this is a separate reporting state and you should -- I mean, if there was -- if there is a compromise, I would think you would address the transfer pricing figure first, but I'll also tell you that from what I heard of Dr. Andrade's testimony, I had significant concerns about that testimony, even before Dr. DeRamus testified, just now. Matter of fact, some of the things that Dr. DeRamus said, we were already concerned about. So, if that helps y'all in drafting your orders, that's the things that I'm taking into consideration. I've been a trial lawyer, I know what it's like to put up expert witnesses, so. And I'll just leave it at that. Thank y'all.

MS. GEER: Thank you, Your Honor.

MS. WOOTEN: Thank you, Your Honor.

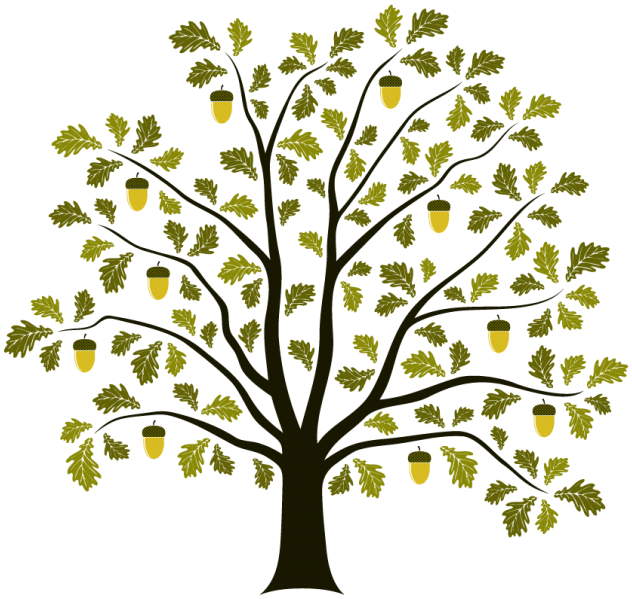
(There being nothing further, the hearing concluded at 6:20 p.m.)

Transcript of the Testimony of

30(b)(6) SCDOR

October 5, 2022

TRACTOR SUPPLY v. SCDOR



LIVE OAK
REPORTING

843.437.9697
www.liveoakreporting.com

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

TRACTOR SUPPLY COMPANY,	:	
	:	
Plaintiff,	:	
	:	CASE NO.
vs.	:	
	:	19-ALJ-17-0416-CC
SOUTH CAROLINA DEPARTMENT OF REVENUE,	:	
	:	
	:	
Defendant.	:	

ZOOM 30(b)(6) DEPOSITION OF SOUTH CAROLINA DEPARTMENT OF REVENUE through its designees ROBERT A. KING, JR. and ORVILLE SHARPE

DATE TAKEN:	Wednesday, October 5, 2022
TIME BEGAN:	10:11 a.m.
TIME ENDED:	3:03 p.m.
LOCATION:	Remote Appearance by All Parties
STENOGRAPHICALLY REPORTED BY:	Marie H. Bruegger, RPR, CRR

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

APPEARANCES:

REPRESENTING THE PLAINTIFF:

NELSON, MULLINS, RILEY & SCARBOROUGH
BY: BRYSON M. GEER, ESQUIRE
Liberty Center, Sixth Floor
151 Meeting Street
Charleston, SC 29401
(843)534-4221
bryson.geer@nelsonmullins.com

REPRESENTING THE DEFENDANT:

SOUTH CAROLINA DEPARTMENT OF REVENUE
BY: NICOLE M. WOOTEN, ESQUIRE
300-A Outlet Pointe Boulevard
Columbia, SC 29210
(803)898-1826
nicole.wooten@dor.sc.gov

- - -

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

I N D E X

PAGE

ROBERT A. KING, JR.:

Examination by Ms. Geer.....4

Examination by Ms. Wooten.....112

Examination by Ms. Geer.....116

ORVILLE SHARPE:

Examination by Ms. Geer.....119

Certificate of Reporter.....172

INDEX OF EXHIBITS

DEPOSITION PAGE

Exhibit 1 Notice of 30(b)(6) Deposition.....4

Exhibit 2 SC Code Section 12-6-2320.....21

Exhibit 3 Media General Communications v. SCDOR.....25

Exhibit 4 SC Revenue Ruling 15-5.....29

Exhibit 5 Department Determination [TSC 15-41].....77

Exhibit 6 Explanation of Audit Assessments and Adjustments [TSC 8-14].....93

- - -

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

ROBERT A. KING, JR.
being first duly sworn, testified as follows:
EXAMINATION
BY MS. GEER:
Q Mr. King, do you prefer Mr. King or Rob during the deposition?
A Rob is fine.
Q Okay. And I prefer Bryson, so that works out.
All right, Rob. As you know, we're here to take your deposition pursuant to the South Carolina Rules of Civil Procedure and the Rules of the Administrative Law Court. We're starting out this morning with a 30(b)(6) deposition notice that Tractor Supply Company, which is my client, sent to the Department, and I assume you've looked at that notice?
A Yes.
MS. GEER: And Marie, that can be Exhibit 1.
(Exhibit 1, Notice of 30(b)(6) Deposition, was marked for identification.)
BY MS. GEER:
Q So you've reviewed that notice, and my

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

understanding is that you'll be covering some of the topics on that notice, and Orville Sharpe will be covering some of the topics.

A That is correct.

Q Maybe just so it's clear, I can read through, just for the record, which ones Nikki had let me know you will be covering. Let's see. So I have that you'll be covering Topics 1, 3, 5 through 7, 9 through 10, 14 through 18, and 21 through 23, and that leaves Orville Sharpe with 2, 4, 8, 11 through 13, and 19 through 20. I don't expect you to be able to cross-reference those entirely. I'll just let you know that that's what Nicole Wooten has told us will be the covering.

MS. GEER: Now, I'll just say on the front end that there is a little bit of overlap between some of the topics, where, for example, several of the topics deal with the alternative apportionment statute, so I'm just going to ask them how I've divvied them up, but, Nikki, please jump in if there's a particular one where, because of the overlap, you think I need to be asking Orville instead of Rob.

MS. WOOTEN: Okay.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

BY MS. GEER:

Q And Rob, I hope that you will also let me know if there is a particular question within the topics that you don't feel comfortable covering, just let me know, and we can cover it with Orville.

And so for these topics where the Department has designated you as the witness, do you understand and are you comfortable answering the topics, not from your individual perspective or capacity, but on behalf of the Department?

A Yes.

Q And you've had your deposition taken before, correct?

A Yes, I've done one before.

Q So I know you're kind of familiar with the ground rules, but I'm just going to review them for you.

So if at any time you don't understand my question, please just ask me to rephrase it. I'd be happy to do that.

We are supposed to try not to talk over each other. It's a little bit harder when you're on Zoom, versus in person, knowing when someone is like pausing to take a breath versus when they're pausing because they're done, so I'll try to like

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

wait a second and make sure that you're finished, and if you'll do the same for me, but if we do start to talk over each other, we'll just both stop and try not to drive Marie crazy.

A Okay.

Q And then if you'll answer with yeses and nos versus head shakes or uh-huhs. Those are harder for the court reporter to pick up.

And from time to time, your attorney may object to one of the questions I've asked, and so unless she instructs you not to answer, you'll still go ahead and answer the question. If there's been a lot of discussion, you can always ask me to repeat the question if by that time it's not clear to you what the question was.

We can also take breaks at any time. I'll probably take one after, say, an hour, hour and a half, take a five- or ten-minute break, but if you need one sooner than that, just let me know.

And if we -- I'm not sure exactly how long this will take, but if we need a lunch break, we'll take one.

All right. I think that covers the general stuff. Do you have any questions before we get started?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A I do not.

Q And I am going to go through some background questions with you first, just so I understand what your background is, so these will be in your individual capacity versus on behalf of the Department, and I'll make clear when we're done with the background.

A Okay.

Q Would you mind stating your full name for the record?

A Robert A. King, Jr.

Q And how many -- you mentioned earlier that you had been deposed before. How many times have you been deposed?

A This will be my third.

Q And if you'll just tell me the general issue or nature of the cases in which you previously testified, without giving any taxpayer names.

A The previous was sourcing, and the one prior to that was quite a few years ago, and it was concerning sourcing also.

Q And did you testify at trial in either of those cases?

A Just the one that was several years back.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q And so when you said that they both dealt with sourcing, did they have any issues in them that were similar to the issues in this case?

A They did not.

Q And if you could just walk me through your educational background, just beginning with college.

A Okay. I graduated with a finance degree from Clemson University.

Q What year would that have been?

A That is 1988.

Q Any additional education or certifications?

A I do not.

Q And then beginning with when you graduated, just walk me through your employment history.

A Okay. I started with Department of Revenue in January of 1989. I started as a revenue officer. I did that from 1989 through 1995, early 1995.

In 1995, I started in the domestic role, domestic audit department. I did that role from 1995 to the end of 2005.

In first of January of 2006, I became a

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

foreign auditor. I did that role from 2006 through the end of 2018. I retired at that point.

I came back in a temporary capacity in January of 2018. I'm sorry. I might have said through 2018. Through 2017. I'm sorry.

I started in January of 2018 in a different capacity, still with foreign audit, but it was in a different capacity, getting a program back up and running. We had lost some folks. It was a small group in the JDC program, and so I did that for eight months, while still helping the foreign audit staff with things like audits and so forth, but my main role was JDC.

In August of 2018, I became the foreign audit -- a foreign audit supervisor for the nexus group in the foreign audit group. I held that role until 2020, and I think it was right around August or so of 2020, and I became the audit manager over all foreign audits, which entails foreign audit and nexus.

JDC is no longer part of foreign audit; it is now part of our miscellaneous group. And that happened back in April of 2018. So I had -- I was kind of in a different group when I finished up my role with the JDC.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q And remind me what JDC stands for.
A Job development credits on withholding. It's credits that are created through the commerce department.
Q And so in '18, you were -- you came back from retirement working with foreign audit, but mainly working for that JDC program?
A Yes. I came back in a capacity to do the JDC program.
Q And you did that until did you say 2020?
A No. I did that until August of 2018. I did it for about eight months.
Q And then you became the foreign audit supervisor in the nexus and foreign audit group?
A Yes.
Q And then how long were you in that position?
A About two years.
Q So 2022 is when you became the audit manager?
A 2020, around August of 2020.
Q And then I might have gotten confused there. Did you then become the audit manager?
A Yes.
Q When was that?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A In August of 2020.
Q So it was from '18 to '20 that you were the foreign audit supervisor?
A Yes, correct.
Q And if you could just tell me -- give me a kind of a summary of your job duties as the foreign audit supervisor and then as the audit manager.
A My duties as a supervisor is I managed the whole audit group, foreign audit group and nexus group at first, and then we -- as we hired some more auditors, we actually split that and hired another supervisor, which was Orville Sharpe, in October of 2018. I then had the nexus group and the -- half of the foreign audit group.
Q And did you manage a certain number of auditors underneath you?
A I believe it was five or six. It kind of varied, had some come and some go.
Q And what would your role have been in supervising those auditors?
A I would supervise their work, make sure that what -- assist them and helping them complete audits and so forth, manage their day-to-day activities.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q Were you responsible for training the auditors, or was that someone else's job?

A No. We -- I was -- that was part of my duties.

Q And then how did that differ when you became the audit manager?

A When I became the audit manager, I became over -- at that point, we still had two supervisors, and I'm over those two supervisors, who have six -- five and six auditors reporting to each one of them, and I still -- I still have the nexus group.

Q And so is Orville Sharpe one of those supervisors still?

A He is, that is correct.

Q And who is the other one?

A Linda Ward.

Q And so in your role as audit manager, do you have less contact with the individual auditors and more --

A That's correct.

Q So you were basically a lifer that then came back for a second tour of duty, right?

A That's correct. Been there a long time.

Q Yeah. That seems to happen a lot there.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

That's a good sign that it's a good place to work when people are willing to retire and then come back for more.

So at the time of the audit of Tractor Supply Company, were you in the role of foreign audit supervisor?

A No. I was in the JDC role the entire time of the audit.

Q And so did you have any personal involvement in the audit?

A I helped Steven Riggs with the audit. I assisted him. He was the lead auditor; I assisted.

Q And I may just not understand exactly the delineation of your job duties. So when you were with JDC, were you also supervising or assisting with certain audits?

A I was assisting with various -- with audits. For about an eight-month period between January of 2018 through August, I was helping various auditors with audits. That was not my main duty.

Q But what you were doing at that time, was it similar to what you -- to the job responsibilities or role of the foreign audit supervisor, or was it something different?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A No, no, no. I was more in the capacity of an auditor.

Q So it was more assisting in the audit versus supervising the person performing the audit?

A Correct, correct.

Q And would you say that you were involved from start to finish, or did you come in and out?

A Probably more like in and out, and I went -- I went with Steve to the audit. As far as finishing up, that was -- Steve and his supervisor would have kind of finished the audit up.

Q And who would his supervisor have been at that time?

A Dana Taylor.

Q So you went with Steven to the audit, and then -- I'm sort of struggling here with if I should go into this now versus the individual deposition.

A I understand.

Q Let me just think here.

MS. GEER: Nikki, do you have any objection if I just go ahead and get his involvement in the audit as part of his background?

MS. WOOTEN: No. That's fine.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

MS. GEER: Yeah. It might just avoid the whole need for -- I may not -- you know, unless there's something in the 30(b)(6) that he doesn't know that I have to go to a personal, we may just be able to avoid doing even a separate deposition, just keep it all under background.

BY MS. GEER:

Q So, Rob, just walk me through what you recall about going to the audit with Steve Riggs.

A Okay. It was an assignment Steve had. From time to time, I went with auditors on site, and this was one of those occasions. I was at Tractor Supply in the past, so I was familiar a little bit of Tractor Supply.

So I had told him I would go with him, and so we went to the audit, kind of -- we looked at the information together, and we went to a conclusion of what direction we would go. You know, I guided him through that, things that I felt like we should do and so forth.

Of course, that would have to go back through his supervisor, but I feel like what I guided him through is kind of what the audit became, so in that capacity. But, you know, it was

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

ultimately his decision, and he had some experience to do so and -- but I kind of confirmed a little bit with what -- our conclusions were the same.

Q And so after you were at the audit visit, what was your role in terms of preparing the actual work papers and that type of thing?

A Not so much on that end. As far as the write-up, we discussed, you know, things that needed to be mentioned in the write-up and so forth. From that point on, that would be kind of with his supervisor, but I just kind of told him things, you know, that I would have put in a write-up and so forth.

Q So would that --

A Talking about transactions and that type of stuff.

Q Would that advice or guidance have been on the front end or in the middle of drafting it?

A When we were there, when we were there.

Q So prior to him actually writing everything up, or was he writing some things up while you were there?

A Probably a little bit started getting started while we were there.

Q But he was actually doing the write-up

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

and --

A Correct, correct.

Q And then after he completed the write-up, did you review it?

A That would be a supervisor.

Q So your guidance and advice and input was more on the front end versus the back end?

A Correct.

Q And so would you say that your involvement ended once you got back to the office, or were you continuing to stay involved in some way?

A I wasn't really involved too much after the fact, but if he would have had a question, I would have assisted in that matter. We were in the same office, which we were in the Charleston office, so --

Q So I think you're saying that you would have assisted him if he asked you to?

A Yeah. I just don't recall if he did.

Q You don't have any specific recollections of discussions that you had?

A Correct, correct.

Q And I assume you also don't have any specific recollections of any other involvement

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

beyond discussions with Steven Riggs after that involvement?

A That's correct, that's correct.

Q All right. I'm going to move now to the topics. Do you have -- you have all the exhibits on your computer versus hard copies, right?

A That's correct, what Nikki sent to me right when we were -- we first got on.

Q So what I'll do, because you'll need to be looking at other exhibits as well, I'll just read the topic into the record to begin with, and then we'll move to the individual exhibits, but if any time you need to look back at that topic or you need to toggle between exhibits, just let me know if you need more time to go back and look at something.

A Okay.

Q So the first topic is -- oh, and let me also say that there was a general instruction on this notice that said that the phrase "audit time frame" is January 1st, 2014, through November 12th, 2019, which is the date of the Department determination, so a lot of these questions will be asking about that time frame.

A Okay.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q If there are ever any instances where there's a different answer depending on what time frame you're talking about, if you'll just let me know that and tell me, well, you know, in 2014, it would have been this, but in 2019, it would have been this.

A Okay.

Q Otherwise, I'll just assume that the answer is the same throughout that time period. Is that fair?

A That's fair.

Q So the first topic is, "The Department's interpretation and application of South Carolina Code Annotated Section 12-6-2320(A), Media General Communications, Inc. versus the South Carolina Department of Revenue" -- just for time, I'm not going to say the entire citation of these, I'm just going to say the case names -- "Carmax Auto Superstores West Coast, Inc. versus the South Carolina Department of Revenue, and Rent-a-Center West, Inc. versus the South Carolina Department of Revenue during the audit time frame and (if different) as of the date of the deposition, as well as any policies, practices, or procedures in place during the audit time frame relating to the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

same."

(Exhibit 2, SC Code Section 12-6-2320, was marked for identification.)

BY MS. GEER:

Q All right. So the first exhibit is going to be that statute, South Carolina Code Section 12-6-2320. So if you want to pull that up and have it in front of you in case you need to look at it.

A And I'm using Nikki's law book.

Q So are you familiar with this statute?

A Yes.

Q And so would you agree that an alternative method can only be used when the standard method of apportionment does not fairly represent the taxpayer's business activity in the state?

A Yes.

Q So Step 1, I would assume, would be for the Department to determine whether the standard method of apportionment fairly represents the taxpayer's business activity in the state. Is that correct?

A Yes.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q And if the standard method does fairly represent the taxpayer's business activity in the state, does the analysis at that point end, and you cannot invoke alternative apportionment?

A If we determine that it's fairly, then we would not, correct.

Q You would not invoke alternative apportionment, correct?

A If we determine it is fair, correct.

Q And so if it does not fairly represent, then you would move on to the next step?

A Correct.

Q And then if you look at the statute, it says that if the standard method does not fairly represent the taxpayer's business activities, then it says the taxpayer may petition or the Department may require an alternative method. Do you see that?

A Yes.

Q And so would you agree that it's not mandatory for either the taxpayer to petition or for the Department to require an alternative method, it's an optional -- it's optional?

A It is something that we could both do.

Q It's something you could both do, and

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

it's something that you both could choose not to do?

A Correct.

Q So Step 2 would be to determine -- if you're on the Department side of it, would be for the Department to determine whether it's going to invoke alternative apportionment?

A Correct.

Q So in practice, does the Department always invoke alternative apportionment if the standard method doesn't fairly represent a taxpayer's business activity, or are there occasions where the Department does not invoke it, even though it could?

A We try to be consistent, so if we determine that it is, that is the route we'd go, and that's why we follow 15-5, so -- and we follow the steps within 15-5.

Q So just to make sure I'm clear, are you saying -- when you say you want to be consistent, are you saying you want to be consistent so that you always do invoke it?

A Well, yes, but each case has a different set of facts and circumstances, so if they fall within what we -- we think that it's not fairly

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

representative, then that's the route we go.

Q All right. And I apologize. I just want to make sure I'm understanding. Are you saying that, yes, you do always invoke it if you -- if the standard method doesn't work for a short-hand term, or are you saying that --

A Yes, yes, yes.

Q So you always do invoke it --

A Right, right.

Q -- if Step 1 is met, okay.

And is there anywhere that you're aware of that that practice, that you always invoke if Step 1 is satisfied, is there anywhere in 15-5 or any other publications where that is stated, or is that just a policy or practice of the Department?

A That is a practice, but, you know, we try to follow how 15-5 guides us through it. And 15-5's a guidance for that statute, and so we try to follow that. That's our goal is to follow that.

Q So we've talked about Step 1, and then we've talked about Step 2, which, as I understand it, the Department is always going to get past Step 2, which is to decide to invoke alternative apportionment, so then is Step 3 where the Department decides which alternative apportionment

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

method to use?

A That would be correct.

Q And what is the Department's -- are you familiar with the Media General case?

A Yes.

MS. GEER: Marie, we'll make -- so we've made the deposition notice Exhibit 1, the statute is Exhibit 2 -- I can't remember if I actually said that -- and the Media General will be Exhibit 3.

(Exhibit 3, Media General Communications v. SCDOR, was marked for identification.)

BY MS. GEER:

Q So what is the Department's position on whether Media General impacts Steps 1, 2, or 3 of that analysis?

A What it would -- it would impact three in the fact that it talks about -- it gives us the authority to use combined reporting, and so -- and the reason we -- 15-5 talks about that is because that was in Media General, and that's why we use that particular method, to be consistent with that court case.

Q And I assume that Media General would

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

only impact Step 3 where you have a taxpayer that is a member of a unitary business. Is that correct?

A Yes.

Q So Media General would not impact Step 3 if you did not have a taxpayer that was a member of a unitary business?

A Correct.

Q So you view -- or the Department views Media General as impacting Step 3 when you have a unitary business, and if you could just tell me again, I know you started to talk about it, but how you view Media General as impacting Step 3.

A The courts concluded that South Carolina had the authority to use combined reporting, and if it fairly -- in order to fairly represent the taxpayer's business activity in South Carolina, and so that's why we use that, that reference.

Q And what is the Department's view on how the Carmax case relates to Steps 1, 2, or 3?

A Well, in the Carmax, we were adjusting the apportionment ratio in those particular cases, that and Rent-a-Center, in the Media General, we were doing income, so in this case, we were -- in Tractor Supply, we were adjusting income, which is

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

part of the apportionment method formula.

Q So do you view Carmax as having any impact on this case?

A No.

Q Is the answer the same as to Rent-a-Center?

A Yes, correct.

Q And if I understood you right, that's because those cases were dealing with the adjustment of the apportionment ratio versus the income?

A That's correct.

Q I think there are some later topics that also deal with the statute that we'll get into this in the later topics, and then Topic 2 is being covered by Orville. Let me skip that.

The third topic is, "As of the date of the deposition, all legal authority relied upon by the Department as authorizing its use of combined unitary reporting to assess corporate income tax."

So we've just talked about Media General, so I assume that that is part of the Department's legal authority?

A Yes.

Q Is there any other legal authority that

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

the Department is relying on?

A Just the statute itself, the 2320(A)(4).

Q So the statute itself and Media General?

A Uh-huh, yes.

Q And I think you said this earlier, but you believe that Media General was interpreting the statute, correct?

A Yes.

Q And do you believe that Media General granted any additional powers to the Department beyond what the statute grants, or that it was just interpreting the statute?

A It was confirming that the statute was correct.

Q And when you say, "Confirming the statute was correct," do you mean confirming that the statute authorized combined unitary reporting as an alternative method?

A Yes.

Q And am I correct to assume that that would be the Department's authority in this case as well?

A Yes.

Q So the statute and Media General, that's it for the Department's legal authority on the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

right to use combined unitary reporting as an alternative method, correct?

A Correct.

Q Topic 4 is Orville, so we'll move to Topic 5. "During the audit time frame, the purpose of Revenue Ruling 15-5, its effective date, its applicability to time periods prior to its enactment, the Department's decision to issue it as a revenue ruling rather than promulgating it as a regulation under the APA, and relatedly, but more specifically, the reasons the Department did not, and still as of the date of the deposition has not, promulgated a regulation setting forth the methodology found in Revenue Ruling 15-5, Part V, Pages 7 through 11, entitled 'Methodology Used by South Carolina for Combined Unitary Reporting.'"

MS. GEER: All right. So for this one, Marie, if you could mark Revenue Ruling 15-5 as our next exhibit.

(Exhibit 4, SC Revenue Ruling 15-5, was marked for identification.)

BY MS. GEER:

Q And Rob, do you want to get that handy?

A Sure. Okay.

Q So you're familiar with this revenue

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

ruling?

A Correct.

Q If you could turn to Part V, Pages 7 through 11, that I just referenced that are titled "Methodology Used by South Carolina for Combined Unitary Reporting."

A Okay.

Q Hold on. Let's bring this -- I have to put my password in so I can have mine up.

Does this section describe the way in which the Department will implement combined unitary reporting when using it as an alternative method?

A Yes.

Q Has the Department ever required a taxpayer that was not a member of a unitary business to use this methodology?

A Not to my recollection.

Q And is one of the reasons that the Department issued this revenue ruling that it anticipated using this method regularly so that they wanted to provide guidance to folks on how it would be implemented?

A We were using it prior. We were using combined reporting prior and after the Media

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

General court case, but they wanted to have guidance for the Department as well as the taxpayers it would affect, so that's why 15-5 came about. And they had input from industry as well before issuing.

Q So my initial question was whether the Department anticipated using this method regularly. Did it anticipate using this method regularly?

A I don't think that was the purpose of it. In the event that we would, there would be some guidance.

Q Well, I assume that you wouldn't go to the trouble of writing all of this out if this was something that was going to be used as an exception or very infrequently, so I assume you at least anticipated using it somewhat frequently or somewhat regularly?

A That I can't answer, but I still think it was -- you know, it was addressing something that we had done, and so it gave the taxpayers understanding where we were coming from.

Q And you said that it was not just the taxpayers, but also the Department that you were wanting to --

A Correct. It was for us to be able to

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

follow as well.

Q And so just so I understand, because I had the impression that the Department anticipated using it regularly, and you're saying that's not really the case, but like how frequently is it used?

A That I don't know. I don't have an answer for that. I don't know what the definition of frequently or infrequently is.

Q Well, would you be able to give an estimate as to like how many taxpayers per year are in an alternative method as combined unitary reporting is invoked on them?

A It would be above 20.

Q 20 taxpayers per year?

A Yeah, probably so. So I don't know if that's considered frequently or not.

Q I appreciate your comment on that.

A We've got 15,000 tax returns that come in, so to me, it's not that frequent, but you may view it differently.

Q No. I appreciate your clarifying that.

Now, has the Department ever issued similar guidance to the public on how it will implement any other alternative method, or is

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

combined unitary reporting the only one that has this type of guidance?

A It's the only one that has this guidance.

Q And so you said it was because you wanted to provide guidance to taxpayers and the Department. Was it prompted primarily by Media General, or was there something else that made the Department think that this was a good idea to promulgate -- to issue this?

A Well, I think it just helped the taxpayers understand when we did use combined methods like that in an audit that -- where we were coming from and how we arrived at it.

Q Did the Department ever consider promulgating this methodology as a regulation?

A Not to my knowledge. We wanted it as -- we felt like 2320(A)(4) gave us the authority, and this was the guidance for that, so we felt like that the statute was giving us what we needed as far as the law goes.

Q So you felt that the statute gave you the guidance needed, and you said that you -- to your knowledge, you did not consider doing it as a regulation. Is that correct?

A Not to my knowledge.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q So there wasn't any analysis about the pros and cons of doing it as a revenue ruling versus a regulation?

A Not to my knowledge.

Q Like from the Department's perspective, what would have been the harm or the reason not to promulgate it as a regulation?

MS. WOOTEN: Object to the form.

THE WITNESS: Well, I think the reason that -- we felt like the statute gave us the authority so the reg was not needed because we thought we had it in the law. The purpose of 15-5 is just to show guidance of how that is going to be treated in 2320.

BY MS. GEER:

Q I guess I'm just trying to get at are there any negatives from the Department's perspective on doing it as a regulation and giving the legislature the chance to reject it?

A There's not any negative that I'm aware of.

Q I think you've answered this, but I'm just going to make sure there's -- you don't have any clarification for me. I think I've understood your testimony is that the Department does not view

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

15-5 as giving it any additional authority relating to the alternative apportionment statute, it just views it as interpreting. Is that accurate?

A That is accurate, correct.

Q And we talked about that the Department wanted to provide guidance to taxpayers. Is the type of guidance that they were trying to provide to taxpayers, like wanting taxpayers to understand what factors the Department would look at when it was deciding whether and how to invoke alternative apportionment in the form of combined unitary reporting?

A Yes.

Q And I assume help them understand and know when they might be subject to alternative apportionment?

A Correct.

Q It looks to me that the revenue ruling was issued on June 12th of 2015. Is that your understanding?

A I think it was June 14th, but you may be right. I thought it was June 14th, but I may be wrong.

Q Let me flip to the last page. I could be wrong too. Let's see. The version I have says

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

June 12th of 2015.

A Okay.

Q It's only two days different, so I guess we're not far off.

So what is the Department's position as to this revenue ruling's applicability to time periods prior to June? We'll just say June of 2015.

A How would we opine and address that. In 15-5, whereas, under normal circumstances, if a taxpayer we felt had a substantial understatement, we could go back an additional three years and apply substantial penalties and so forth. This does not allow us to do that. If we invoke unitary on a taxpayer, then we cannot go back the additional three years, and we cannot add penalties, but we could -- but we could go back prior to 2015.

Q And what was the Department's thinking on that? Why not do it only going forward?

A Because we were -- we were already doing it in the fact that -- we felt like since the court case of Media General, we had started at that point, we were able to do it as far back -- and that was in 2010.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q Did the Department consider the fact that it was wanting to provide both taxpayers and auditors with more specific guidance on how it would be invoked? Like why do you not consider at least in doing it going forward so that both auditors and taxpayers would have full notice and knowledge of how those determinations were going to be made?

A That was a determination by policy.

Q And are you able to speak, or do you know why policy made that decision?

A I do not.

MS. GEER: So, Nikki, I don't care how we -- if we want to just address this later, but I feel like that was a topic that we specified as wanting to know, so if Rob doesn't know, that's fine. If you want to just find out afterwards, if you agree that it was covered by the topic, you can just get that information to me later.

MS. WOOTEN: When you say "later," do you mean in written form? Do you want me to produce someone else?

MS. GEER: I mean, probably in written form would be sufficient for my purposes.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

MS. WOOTEN: Okay. Can you make -- can you -- would you be okay sending an actual question to me so that we can respond to you in written form?

MS. GEER: Yeah.

MS. WOOTEN: Of the specific question that you want answered.

MS. GEER: And Marie, do you have a way to flag where we have things we're going to go back to, just so it's easy to find?

BY MS. GEER:

Q Rob, do you know whether the Department resolved cases with taxpayers in the past on the basis, either in part or in whole, that Revenue Ruling 15-5 was issued after at least a portion of the audit period at issue?

A Can you repeat that? I'm sorry. I missed that. I'm sorry.

Q Yeah. It was kind of confusing. Let me try to say it better.

So we've just talked about that the Department has viewed it as acceptable for it to invoke alternative apportionment in cases where the audit period, at least in part, covers time periods prior to the issuance of Revenue Ruling 15-5, and

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

so I'm asking whether in the past, has the Department ever resolved cases with taxpayers on the basis that they didn't -- that the tax period at issue included time frames from before the revenue ruling?

A It settled because it was not -- because a period was before? Is that what you're asking?

Q Yes, yes.

A Not to my knowledge. I don't think that was a determining factor. It settled.

Q So as I understand your position, if we were just trying to sum it up, you believe that the Department is able to and does impose alternative apportionment in cases where the audit period includes time prior to the issuance of Revenue Ruling 15 because Media General was issued prior to that in 2010?

A Correct.

Q So you acknowledge that they would not have the benefit of seeing the guidance that's in 15-5, but you believe that Media General makes that sufficient?

A Correct.

Q Or I should say is sufficient.

A Right.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q I'm going to move to Topic 6. "As of the date of the deposition, the types of taxpayers, for example, retailers, manufacturers, service providers, et cetera, that the Department has invoked combined unitary reporting against under Section 12-6-2320(A) and whether there are any types of taxpayers that the Department, as a policy matter, does not invoke combined unitary reporting against under the statute."

So you want me to -- I'll break it down for you.

A That's okay. I think I understand where you're going. Yes, we've used them on all those particular examples that you gave. We can invoke that on all of those. One case we cannot do are banks, because banks file under a different apportionment -- I mean, excuse me, tax rate -- so we do not do that under there, under those, but those other types, we can.

Q And in fact, you have invoked alternative apportionment?

A Yes, yes.

Q And so I know retailers, because, obviously, we have a retailer here.

A Right.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q But manufacturers you can and have?
A Yes, yes.
Q And service providers you can and have?
A Yes.
Q And other than banks, can you think of any other types of taxpayers that, as a policy matter, the Department does not invoke combined reporting against?
A I cannot think of any.
Q Topic 7. "During the audit time frame, all policies, procedures, guidelines, and standards used to determine whether a taxpayer is a member of a unitary business, and if yes, the other members included in the unitary business; all training to auditors on how to make the determination; all notice to taxpayers of how the determination will be made; and all procedures in place to ensure a uniform, fair, and predictable application of the test and method used to make the determination."
So let's start with -- and we've talked about Revenue Ruling 15-5.
A Uh-huh.
Q Is there anything besides 15-5 that is used by the Department to determine whether a taxpayer is a member of a unitary business?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A During the audit period, 15-5 is what we relied on.

Q And if you could point me to like where in 15-5 you think that the Department is looking at in terms of determining -- making the determination of whether a taxpayer is a member of a unitary business?

A Part V(A), Unitary Business Requirement, starts with that, and then under that, there's some preferences underneath there where you see 13, 14, 15, that type of stuff, kind of describes types of affiliates that we see and so forth. And then it goes into (B) also, where we use water's edge instead of worldwide. We could do worldwide if the taxpayer agrees to that, but normally, water's edge is how it's treated.

Q And so Part A that you referenced, it talks about over the years, the courts have developed various tests for determining whether the different components of a business are unitary. Are there any particular cases that the Department looks to for this?

A Other than Media General, that's usually our guide. We look to see how they're related, how the flow of value is between them, whether they can

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

exist without each other.

Q So you looked to see how they're related, whether they could exist without each other.

A How dependent they are on each other.

Q And is the how dependent they are on each other, is that -- like what shows -- give me some examples of what would show that they are dependent on each other.

A It would be whether -- you know, could each affiliate function on their own without the other one, would, you know, Tractor Supply stores be able to operate if they didn't have an arm that -- or an affiliate that is doing the purchasing, would purchasing be a business without Tractor Supply stores selling their products, so that type of stuff.

Q And does it matter to the Department if -- for example, let's talk about the procurement that you just mentioned. If TSC currently has an affiliate performing that procurement function, but they could go out and get a third party to perform that procurement function, how does that weigh into your analysis?

A It weighs in a lot. Well, for one, if they were to do that, which I've never seen one do

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

that, but if they did, that would change all the facts in the case, because they would have to change their 10-K, because they wouldn't be as successful as they were if they were paying that same fee to a company outside, because that company would make the profits that they were showing in their company. So it just changes -- that shift changes all of the -- a lot of the facts in the case.

Q But I guess what I'm trying to get at is does it matter to you if they could do that, or are you looking just at how they actually do it?

A How they actually do it. Until they show me that they would, that would be the only thing you could go by.

Q So just to make sure I have everything, the first question was just any written policies, procedures, guidelines, standards that the Department can use to determine whether a taxpayer is a member of a unitary business, we've identified 15-5. You identified sections within that. When I asked about cases, because the revenue ruling itself refers to cases generally, you said primarily Media General, right?

A Yes.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q So does that -- have we covered all of the written things that the Department would look at in making its determination?

A Yes.

Q And then once the Department determines that a taxpayer is a member of a unitary business, what are the policies and procedures and standards used to determine who the other members of that unitary business are? Is it the same guidance that we just discussed?

A Yes. They could bring somebody that's outside of the unitary federal group on occasion if there is some relationship between the other members. Don't see it often. It could happen.

Q And then as far as training to the auditors on this topic, what is done as far as that goes? Is it mostly on the job and looking at these --

A Yes. During that audit -- during the audit period, that is correct.

Q Primarily on-the-job training?

A Yes.

Q And would there -- let me first ask, do the auditors, I assume, have access to the things that we've just talked about, Media General and the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

revenue ruling?

A Yes.

Q And are they told to look at those when they're making these determinations?

A Yes.

Q And is there anything else in writing, any sort of like written training materials or checklists or anything like that?

A Not during the -- not during the audit period.

Q And is there anything else in writing that has been provided to taxpayers, any other kind of guidance, beyond Revenue Ruling 15-5?

A Not that I recall. I apologize. 15-2 is out there also. I apologize.

Q No. That's okay. And are there any procedures in place to help ensure that the decisions that are made by the Department on these types of issues are consistent across different taxpayers? Like is there any kind of internal auditing that the Department performs of its own cases to see that, or is it kind of done on an ad hoc basis by the supervisors? Or tell me what you know about that.

A As the supervisors, they would make sure

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

that their auditors are consistent, not going out on their own making decisions that aren't what the Department would view correct.

MS. GEER: Nikki, the next topic is fairly long that's covered by Rob, so I'm thinking it might be a good stopping point just to take a quick five-minute break. Is that good with you? Are you okay with that?

MS. WOOTEN: Yeah, that's fine.

(A recess transpired.)

BY MS. GEER:

Q Topic 9 I think is the next one that you're covering. Some of these topics are long. I think I'm just going to start deferring to the description in the notice, since everybody has that in front of them, versus of driving Marie crazy.

MS. GEER: Sorry, Marie.

BY MS. GEER:

Q So we're moving to Topic 9. So, Rob, this one relates to the six factors that are listed. I'm trying to get to it in my revenue ruling. Part IV, Section C.

A Okay.

Q So how was the decision made to include the six factors that are listed in Part IV(C) of

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

the revenue ruling as those that should be considered to determine -- or may be considered to determine whether the standard method fairly represents the taxpayers' business activities in South Carolina?

A Repeat the question. I'm sorry. You're going to have to repeat that again.

Q Where do those six factors come from? Was that something that the Department copied from another state or came up with on their own or --

A I do not know the answer to that. I apologize. I don't.

MS. GEER: Marie, do you mind just flagging this one as one I might go back to.

MS. WOOTEN: Bryson, can we go off the record for just a minute?

MS. GEER: Yeah.

(The deposition went off the record.)

BY MS. GEER:

Q So, Rob, back to these, the six factors that are listed at the bottom of Page 6. So these are the factors the Department may examine when analyzing whether the standard formula fairly represents the taxpayer's business activity in

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

South Carolina. Now, these only apply if there's a unitary business, right?

A That's correct.

Q And does this also indicate that it's not automatic if you're a unitary business that you're going to be subject to combined reporting, you got to look at these factors?

A That's correct. You may file unitary for federal purposes, you may have separate types of businesses within things, so you may file for federal purposes. Doesn't mean you necessarily are for state.

Q Right, but it also -- I guess the point I was getting at is just because you might be a unitary business, that doesn't end the Department's analysis. It doesn't just automatically go to combined unitary reporting --

A Correct.

Q -- if it's not a unitary business?

A Correct.

Q So if you have a unitary business, the Department, it's still going to engage in an analysis to determine whether the standard method fairly represents that taxpayer's business activity in the state?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A Correct.

Q And the Department would need to make the determination of whether it's a unitary business before it can start looking at these factors?

A Yes.

Q So let's look at the factors. The first one is amounts paid to related parties for business services or business services provided without payment. Can you just explain to me like what is the Department looking at for those factors?

A If it's just a journal entry, is it truly being paid, are you actually physically wire transferring, cutting a check, anything like that.

Q So is that all that that one is?

A Uh-huh. You're trying to determine, you know, if you're paying somebody, how are you paying them.

Q So how are you paying them. So I was thinking that it also might relate to like how much are you paying.

A Not at that point. I mean, you know, that -- I mean, you can see that part, but just see -- kind of relating to what's being paid, but how they're paying.

Q So just to make sure that I'm following

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

you, I know you're primarily concerned with how it's being paid.

A Right.

Q Are you looking at the amount and whether it's arm's length or not, or is that not part of it?

A No, no, no.

Q So you're looking at how it's being paid, and I assume if it's being paid in cash by wire transfer, that's going to -- how is that going to weigh?

A We want to see if you're truly paying -- you know, if you were paying that to, just like you said earlier, to a third party, you would be paying an amount actually paid out of your -- a lot of times in intercompany, it's just journal entries, and whether it's, you know, procurement fees or interest fee, whatever, so we look at that.

Q And so when I asked you like how is it being weighed, can I assume that if it's being paid by cash or wire transfer, that that is something that would weigh against imposing alternative apportionment?

A It could, it very well could, it could.

Q And when you say it could, does it not

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

always weigh in favor?

A I mean, when you see these six, doesn't mean they have to meet all six or have to meet a certain amount, you know, it's just those are things that we look at, and so as a whole, when you go through all these, then that's where you would -- hopefully, you can kind of get a better idea, correct.

Q Well, would it be fair to say that if you are paying it, if you're actually paying it, then that would not be something that the Department would say weighs in favor of imposing alternative apportionment, you would look at the other factors?

A Right.

Q And so how did this factor apply in the Tractor Supply case?

A This was more -- I believe it was more of a journal entry, which is not uncommon.

Q So if it's a journal entry, are you saying that that's one factor that the Department would look at, but that is not a determinate factor, they would still look at --

A Correct, correct. And there could be other types of expenses. Like interest sometimes, you look at that, is it actually paid, and that's a

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

big deal, the interest and so forth.

Q And are you referring to like an intercompany loan type situation?

A Yes, right, right, right. And that wasn't one of the issues here as far as that, but that's one of the reasons we look at that.

Q So the second factor is profit margins associated with business activities. Can you tell me what the Department is looking for under this one?

A Right. It's looking at -- when we look at a 10-K, we look at what does this business do, what is their source of income for their 10-K, and that type of stuff. So when we look at profit margins, we see -- so what affiliates are making what types of profit margins, is it -- does it make sense in how it's portrayed and so forth. So that's what we look at. It's not a definite bright line, you know, this means that, you know, but we do look at that.

Q And so if I understood you correctly, you're looking at the profit margins of the individual affiliates?

A Yes.

Q And then you're making some sort of

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

comparison of them?

A Yes.

Q And you're comparing them within the group, not comparing them to third parties?

A Correct.

Q And so does the Department believe that different lines of business should have the same profit levels, or what are you looking at for that?

A We're just seeing where the flow of value is, what are the affiliates making and what they're bringing to the table and so forth, where the profits are lying for each affiliate, and that's what we're trying to determine, is that fair or not fair to South Carolina.

Q And could you maybe expand upon like how you decide whether it's fair or not fair? What are you looking at?

A Well, just from the one factor, that doesn't determine, but that -- if you're seeing a nonfiling affiliate with South Carolina, and they're making most of the profit, all right, so then we start looking at why. What is their business purpose? What is their function? What do they bring to the table as far as the overall?

In this case, you know, the procurement

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

company made a larger profit, all right, so you look at things like the 10-K. Is it mentioned in the 10-K? We're successful because we're a procurement company, and we have one of the most successful procurement -- stuff like that. And it very well could, but in this case, we didn't see that.

Q So would it be fair to say that when you -- and you mentioned earlier a phrase, you said you're looking at the profit levels compared to what that affiliate is bringing to the table.

A Yeah, right.

Q Would it be fair to say that you're looking at like what value is that affiliate doing?

A Right.

Q Bringing to the table or performing?

A The flow of value, correct.

Q So you would look to see whether their profit level is justified by what they're doing?

A Right.

Q And you mentioned that you look at the 10-K. Is there anything else you look at besides the 10-K to try to figure out what that value is or what they are bringing to the table?

A We use the -- if available, the 482

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

studies, and we don't -- we're not getting into the percentages on the 482, but we do look to see what they say that -- you know, they describe their affiliates. Sometimes that's what -- that's what we use the 482 for is informational purposes and descriptions and so forth.

Q And so as I understand it, you're not saying that all the companies need to have identical profit levels?

A That's correct.

Q You're saying that the profit levels need to be justified by what that entity is doing for that profit?

A Correct.

Q So I think you started to mention it, but I don't think you fully gave an answer on how this factor applied as to Tractor Supply. You said you looked at the 10-K?

A Yes.

Q So how did it --

A Well, we looked at it to see -- so if the procurement company is the most profitable part, you know, what does the 10-K talk about, and didn't see a lot of that that would -- you would think if that's the most profitable part of your business,

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

it would be mentioned in your 10-K.

Q Let's talk about the third one, capital investments associated with business activities. What does that one mean?

A That kind of gets in what I mentioned earlier about interest and one affiliate lending money or doing factoring and that type of stuff or making investments for the group. Are they able to do it? Do they have the means to do it? I don't believe that was a situation in this audit.

Q So you're looking at what investments the different affiliates make?

A Right, right, right. You see a lot of flow of interest between affiliates and so forth in some audits, and I don't believe that was the case here, so -- but that is -- in other cases, we do see that.

Q But that one didn't apply in this case?

A That's correct.

Q And in the other cases where it does apply, are you primarily looking at whether the interest is actually paid, or is there something --

A Yes, it's true, it's true.

Q The fourth one is --

Sorry. Back to the third one. I assume

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

that if they're not making payments, if they're not paying the interest, that's something that would, in your mind, weigh in favor of that alternative apportionment would be appropriate?

A Yes, yes, uh-huh.

Q So Number 4 is whether business services are provided to both related and unrelated parties on similar terms. Can you tell me what you're looking at there?

A Would you -- would you do the same deal with somebody on a third party, would you pay that kind of profit to somebody not in your group. And I'm sure that the procurement would do that if they could, but would somebody do that with them? In this case, we didn't see that. Don't usually see that. Can't think of a case that I have seen that, but that's what we look at.

Q I'm sorry. When you say you can't think of a case that you --

A I can't -- I can't recall a case that I've seen a third party like that in this -- doing that type of business.

Q Are you saying you haven't seen a third party --

A I haven't seen a retailer like this go to

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

a third party and pay profit level more to them than themselves. It wouldn't be -- I don't think they'd be in business very long if they did, but that's just something we look at. It very well could be. There might be companies that do it, but I haven't seen one.

Q So is this one -- I know you're not stating it in these terms, but in my mind, I'm thinking you're kind of getting at whether the intercompany transaction is an arm's length price.

A No. We don't -- we're not doing a 482 adjustment. In South Carolina, we don't -- we haven't done that. To this day, we still don't do that.

Q But isn't it sort of the converse of what you're saying? You're saying no one would agree to this rate of pay, no one would agree to pay this amount of profit. If it was, indeed, what someone would pay to a third party, then that would be -- it just seems like to me you're looking at whether the price is what a third party would pay.

A Yeah.

Q Does that --

A It's not -- we're still not doing an -- we're not determining whether it's arm's length.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q And so just to factor -- I assume that if you determine that you don't think the goods and services would be provided to an unrelated party at the same rate, I would assume that would weigh in favor of alternative apportionment, in your mind?

A Yes.

Q And how did that factor apply in Tractor Supply?

A We felt like that was the case in the procurement company.

Q And when you say you felt like that was the case, you felt like that a third party would not --

A Yes, yes.

Q -- agree to that rate?

A Yes.

Q And is there anything that y'all looked to to make that determination, or is it more just almost a gut feeling of what profit level would be successful?

A Well, it's just explaining the transaction itself and trying to let the facts speak for themselves.

Q Well, I guess what I'm trying to get at is like I know you've said before there's no bright

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

line. I assume there's no bright line here as well?

A That's correct.

Q So is there anything y'all are looking to -- I know you said you don't really -- well, maybe I -- do you look at the 482s for purposes of trying to figure this question out?

A No. As far as determining the percentage that would be acceptable, no, we don't look at those percentages.

Q Well, let me just give you a hypothetical so I can make sure I understand what you're saying. Let's say that you hired -- I know y'all don't do this, but let's say you hired your transfer pricing person, and they looked at the transfer pricing and said this is good, this is reasonable, this is accurate, this is what a third party would pay. Would that impact your decision on this factor or not?

A If we used 482 adjustments like that, absolutely, but we do not use 482 adjustments. So I can't answer that question, because we don't -- we don't hire them. It's one of those -- we don't hire them, you know, but if he told us that, I'm sure we would have to take that into consideration.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q So in other words, you don't do that, but if you had that information accessible to you, that might play into this fourth factor?

A It could.

Q Let's look at the fifth one, whether taxpayers in similar industries provide similar goods and services to unrelated parties under similar terms. What are you looking for there?

A It's kind of in conjunction with Number 4, and they kind of go hand in hand. They are listed separate here, but we're looking at the same type things, you know, and we come across seeing that before or something like that, and in this case, we haven't. And I know you'll probably go back to the same argument with the 482, but until we see it, we just -- we just have to kind of go with -- hand in hand with four.

Q So in other words, is there anything different in your analysis for Number 5, understanding they're listed here separately, or are you applying the same analysis?

A I think we're looking at the same type of information there.

Q And you said something earlier about you're -- I might not paraphrase this exactly

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

right, so please correct me, but something to the effect of you're looking at whether you've seen this type of situation before?

A Right.

Q Do you guys have any kind of like, I don't know, guidelines or matrix where --

A We do -- we do not.

Q So is it based on just your experience as a --

A My experience as an auditor.

Q And then as far as Tractor Supply, as I understand it, you're looking at the same things in general. Did you look at the same things in Tractor Supply as well for four and five?

A Yes.

Q And so as to Tractor Supply, you had not seen or did not believe that there were third parties that would enter into the procurement agreement at the same rates that Tractor Supply had?

A Correct.

Q And that was based on your experience as an auditor of what you had seen in the past and not -- I'm trying to make sure you didn't do any other separate research or analysis?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A No.

Q So in your experience as an auditor, like did you have a -- do you have a figure in mind that would be reasonable?

A I just -- I can't recall seeing where they go outside the group to do that and paid them more than they're making, you know.

Q Is there a number that you would think is reasonable?

A I don't know. I don't know the answer. I'd have to look at all the facts in there and see. Each case -- I mean, each taxpayer has a different set of circumstances and so forth, so I'd have to see all the --

Q Yeah. And I don't mean to ask you that hypothetically as to all --

A I understand. I understand.

Q That would be crazy.

As to Tractor Supply, though, which you did delve into in depth, is there a profit margin that you think would have been reasonable or would be reasonable?

A I don't know if I would get into a number.

Q Does the Department believe that Tractor

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Supply would be entitled to have some profit on the service they're providing, or is the Department's position that if you're going to do that, it should be charged at cost?

A If we felt like it was a true transaction, then we would want to see what the purpose of the transaction is, was it necessary, was it -- was it just to shift income away from the operating company, or was it truly something that should be done. I'm not sure that answers your question.

Q Is there a profit level that would be appropriate --

A There's not a -- there's not a number.

Q Let's look at Number 6, whether the taxpayer would be willing to enter into a similar arrangement with an unrelated third party considering, among other things, the relinquishment of control over the business activity. What is this one looking for?

A Whether they would enter into an agreement with an unrelated party and give them control over how the business did their purchasing and so forth and not have any control of how they did it, having the third party dictate how it goes.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q So maybe could you run through how you thought that applied in TSC, and that might help me understand how you're applying this one?

A I think four, five, and six kind of build on each other.

Q Okay. I was wondering. It seems like some of the same language.

A Yeah. They're very similar, and they're kind of just building on each other. That's just asking just different questions about that same type of transaction.

Q So is there anything you could pinpoint that's a little bit different about this one beyond what we've already talked about, or is it the exact same things you looked at?

A Yeah. It's really the relinquishment of control over the business activities is the biggest thing there.

Q And how do you measure or decide that one?

A It's just would Tractor Supply have somebody, a third party, say, all right, this is how we're going to do the business, how we're going to sell it, and this, that, and the other, would they do that, and in this case, I don't think they

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

would. Like I say, that kind of takes away from what they do best overall, you know, that makes that sale and so forth, and then their 10-K talking about how successful they are in their niche business or whatever.

Q So in Tractor Supply, you determined that they would not relinquish that control?

A Yes.

Q I mean, I assume there are some occasions where if you're entering into a contract with a third party, you're not relinquishing all control. You would, I assume, have a third-party arrangement where you still have some control over what the third party is doing. Is there -- I guess I just don't understand exactly how y'all decide --

A It's just getting control over how you sell the product.

Q Of all of these six factors, are there any that are more important than others, or are --

A No.

Q -- they all three equally?

A I think they'd all be equal, and not all of them will apply.

Q All right. So not all of them apply. Are there any that are not on the list that you do

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

apply, or is this a complete list of the factors that you would consider?

A It's a complete list.

Q On Page 7, at the bottom -- you referenced these a little bit earlier, but we didn't talk about them, the Footnotes 13, 14, and 15.

A Uh-huh, yes.

Q And actually, let me go back to -- I'm going to go back up to the sentence where all those footnotes appear. It says, "The Department has required or approved combined unitary reporting as a reasonable alternative apportionment method in situations involving the use of purchasing companies, management fee companies, and east/west companies within a unitary group."

What is your understanding of what the Department is trying to convey with that sentence?

A These are giving examples, and there may be other types of examples. There are factoring companies and other types of companies, but these were some that we saw quite a bit, I guess, when they were coming up with this revenue ruling. They're using examples.

Q Right. And so this is not trying to set

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

up another set of factors to look at?

A No, no, no.

Q Just telling you how these factors have played out, or what some of these factors --

A Right.

Q -- are that have been found to be appropriate for combined unitary reporting?

A Right.

Q And would it be correct to say that the existence of any one of these facts, one or more of these facts, would not be determinative, you would still go through your full analysis?

A Yes.

Q So just to make it a more concrete example, let's say you found that somebody had a purchasing company and had an east/west company, you wouldn't end your analysis by saying, oh, you've got this purchasing company, and you've got this east/west company, you would go through your full analysis of does the standard method fairly represent --

A Correct, correct.

Q Sorry. I'm just going to finish that sentence so it's clear for the record.

You would go through your full analysis

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

of whether the standard apportionment method fairly represents the taxpayer's business activity in South Carolina?

A Correct.

Q Okay. Thank you. And Rob, you're very good at anticipating exactly what I'm going to ask, so I'm just -- if you'll wait a tiny bit.

A I apologize. I just did it again.

Q No problem. I'm going to have a lot of half questions and then have to go through it again. But anyway, you know exactly where I'm going, so I appreciate that, but we'll try to just make the record be a little cleaner.

A Will do.

Q Let's go to Number 10. So this one deals with transfer pricing reports. I know we've touched on them a little bit, but what is -- from the Department's perspective, what is the role of a transfer pricing study, if any, in the determination of whether the standard statutory method fairly represents the taxpayer's business activities in South Carolina?

A In 15-5, it states that there's not a determining factor. In our cases, we use the 482 for informational purposes. We don't -- we're not

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

looking at the numbers and so forth and arm's length and so forth, but we do use them to describe the transactions themselves.

Q And so is it accurate to say that the Department does not evaluate whether the transfer pricing reports are accurate or reasonable?

A That is correct.

Q And I think you said this earlier, but just because it's within this topic, I'm just going to make sure I understood you correctly, that whether arm's length prices are being charged is not something that the Department considers in its analysis?

A Yes. We do not determine whether they're correct or not.

Q You don't determine it, and it's not something you think is relevant for purposes of your analysis?

A Correct.

Q Has the Department ever had a transfer pricing expert on its staff?

A No, we have not.

Q Have they ever considered having one?

A We had not to this point.

Q Does the Department think that it would

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

be helpful to have one and it just has not had budgetary reasons, or has it even considered whether it would be helpful?

A We have not determined that it -- there are states that do 482 audits. We have not done those to date, so if we start -- if we were to do those, I'm sure that we would have to go that route, but we have not done that and don't foresee it in the near future.

Q And so you said the Department does not and has not ever done 482 adjustments. Is that correct?

A Not to my knowledge.

Q And are you aware if there's any reason why they don't?

A No, I'm not.

Q If a taxpayer has an intercompany charge that is too high or too low, depending on which side of it you're looking at, does the Department think that correcting that by a 482 adjustment is not appropriate, or it just does not -- has chosen not to look at that?

A We have chosen not to go that route. We feel like we have a court case and -- or tax law that says that we can do it by unitary combined,

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

but we don't have 482 adjustment.

Q So you're not -- the Department is not saying that it could attack this problem a different way by adjusting 482s, that could be a way to attack it. The Department believes that a court case has told them that they don't have to attack it in that way and have told them they may attack it via combined unitary reporting, and so that's what the Department has chosen to do?

A Correct.

Q Do you think that it could be helpful in the Department's analysis of these cases to have a 482 transfer pricing expert on the staff?

A I don't know at this point.

Q Sorry. I'm making sure that I'm not skipping over one that you're covering. Looks like Orville is on 11, 12, 13. All right. I think the next one that you're covering is 14.

A Bryson, can I take a moment to ask Nikki to supply her power cable to my computer? I'm getting low.

Q Absolutely, yes.

A We telework, so I don't have a --

MS. WOOTEN: Can we take a five-minute break?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

THE WITNESS: Can we take a five-minute break? She has a different type of laptop than I do.

MS. GEER: Yeah. That's fine.

(A recess transpired.)

BY MS. GEER:

Q So 14, so this one relates to Steve Riggs's deposition in this matter. Have you reviewed that?

A Yes.

Q So is there anything that he said in his deposition that the Department disagrees with or believes is contrary to any Department policies that were in place at that time?

A I didn't -- I didn't read anything that I saw.

Q So one thing he said in his deposition which I was just going to make sure that you and the Department agreed with, he said -- and this is also a topic that Orville is covering, so y'all tell me if you need to defer this, but I feel like it's covered under either of these topics, but -- is it Steve or Steven?

A Steven. He goes by both.

Q Steven said that when he's looking at the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

statute, and he's looking at the language of Subsection A, so when he's looking at whether the standard method fairly represents the extent of the taxpayer's business activity in the state, he's looking at taxpayer as not being the taxpayer that's filing in the state, he's looking at that as being the unitary business of the taxpayer who's filing in the state, so are you saying that the Department agrees with that?

A Yes. I think 15-5 talks about that somewhere in there. I'm not sure where, but I think it talks about the taxpayer is defined as the unitary group.

Q And that would apply throughout these statutes so that where it talks about the taxpayer's income, you're looking at the income of the unitary business?

A That's correct.

Q And you mentioned just now that 15-5 --

MS. GEER: I apologize. Can y'all -- I need to check on something really quick. Hold on one second.

(The deposition went off the record.)

BY MS. GEER:

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q Let me figure out where I was. Oh, I know what I was going to ask you. You said something about that -- when I asked you whether y'all viewed taxpayer as being the filing taxpayer in South Carolina or the unitary business, you said something about 15-5 addresses that in some way. Can you just point me to -- I just can't think exactly where that is.

A Give me just a minute. I'll have to pull it up. And it's just one little sentence in there, so it may take me just a second to find it off the top of my head. Imagine that. I can't find it. It's in there somewhere. I'll find it.

Q What we can do is just whenever we take the next break --

A Yeah. I can find it.

Q -- you can look for it then. That would be great.

A I'll find it in the break. Did you want to move on, and we'll find it?

Q Yeah. I'm going to move on. I'm just looking to see where I go to next.

Let's move on to the next topic. That's 15. So this one I'm looking for the factual support for the Department's position in this

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

matter that the standard statutory method does not fairly represent the extent of Tractor Supply's business activity in South Carolina.

So just trying to get at the -- not the legal arguments, but just the factual support. What facts are you pointing to?

A That would be in the Department determination and the items that were listed and the facts that were listed in the Department determination.

Q I think we have that for an exhibit.

MS. GEER: So, Marie, I don't remember what number we're on, I haven't kept good track, but exhibit-wise, if you could make the Department determination the next one.

(Exhibit 5, Department Determination [TSC 15-41], was marked for identification.)

BY MS. GEER:

Q So I'm just trying to figure out where in the determination there's discussion of the facts that support that particular issue. If you see it before I do, let me know. It looks to me that some of the discussion starts on Page 8.

A I was pulling it up. I'm sorry.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q No. You're fine.
A I was thinking it started on seven.
Q Okay. Yeah.
A It talks about the 10-K and so forth. I'm starting to lose my voice. I apologize.
Q No worries. You're having to do a lot more talking than the rest of us.
A I'm a quiet person in nature, so --
Q So on Page 7, the main facts I'm seeing are talking about that the 10-K is painting a picture of a highly successful and growing business.
A Yes.
Q So as I'm reading just the seven and eight, it primarily looks like you're talking -- or the Department is talking about that the group as a whole is more profitable than the entity that's filing in South Carolina.
A Yes.
Q And then there's a lot of discussion of that it's a unitary -- a vertically-integrated unitary business?
A Correct.
Q And that Tractor Supply is reducing its income by shifting income to Texas via the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

intercompany transactions?

A Correct.

Q Anything else major that you see in here that I'm not seeing?

A A little bit more in this Section C too.

Q That section to me seems to be focusing also on the unitary aspects.

A Yes.

Q Any other facts that you're noticing in here?

A No. You're good.

Q So have we focused on all of the reasons that the Department -- all the factual reasons that the Department believes the standard method doesn't fairly represent the extent of Tractor Supply's business in South Carolina?

A Yes.

Q And I think we've kind of clarified this earlier, but just to ask it explicitly, so when the Department invoked the statute, the Department did so because the standard method failed to reflect TSC's unitary business activity in South Carolina, correct?

A Yes.

Q Did the Department look at all at the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

2001 restructuring during the audit?

A I'm not sure I understand the question. Did we look at --

Q So Tractor Supply did a restructuring of its business in 2001.

A Right.

Q And I was just wondering whether you did any investigation or analysis or review of that structure.

A Whether it was okay to do or --

Q Yeah, I mean anything. Did you look at the restructuring?

A No. We didn't analyze their restructuring previous versus 2001.

Q Did you look to see whether a business purpose existed for the 2001 restructuring?

A I don't recall that we did.

Q Did you look to see whether the restructuring had economic substance?

A I think we looked at the agreements between them. Is that what you're asking? I apologize.

Q That's okay.

A So all those agreements that we had, yes, we looked at all those agreements. I was -- I was

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

misunderstanding what you were asking. I apologize.

Q I think you -- I'm going to ask both those questions, but I think you understood the question that I originally asked was not about the agreements, it was about the restructuring.

A Okay.

Q Did you examine whether the 2001 restructuring had economic substance?

A No, no.

Q And I'll ask kind of the same questions about the entities themselves versus the restructuring generally. Did you all look at whether TSC, as an entity, lacked economic substance?

A In the current audit, we looked to see, in those factors and so forth, if -- whether those six factors we talked about earlier, we analyzed that.

Q And so when we were talking about those six factors, I don't recall us talking about like an entity-specific examination, I think we talked about looking at the intercompany agreements.

A The transactions between the two.

Q So you did look at the transactions

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

between the entities --

A Yes.

Q -- in terms of whether they had economic substance?

A Yes, we looked at that.

Q And which agreements did you look at?

A The sharing, the -- gosh, there was about three of them off my head. I'd have to look back what they -- what they're calling them. Hold on just a second, see if I have it. Sorry. Trying to find it in my attachments. Yeah. It was the four agreements: The master shared service agreement, the administrative service agreement, the procurement agreement, and the use of marks agreement.

Q And so are you saying that you examined each of these agreements for economic substance?

A We didn't determine -- we didn't determine that they didn't have a purpose, and that's why we went -- we do unitary. We're not saying that they don't serve a purpose.

Q So you're not saying that they don't serve a purpose or that they don't have economic substance?

A Correct.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q And the rest of your sentence, I just want to make sure I understood what you meant. You said, "That's why we went unitary." What do you mean by that?

A Yeah. We're not saying that -- there could be a situation where you call them a sham transaction or something like that. That's not what we were doing. When you say that they don't have economic substance, that's the route you're going. You're saying that they have no substance. So we're not saying that they don't. We're just saying as a unitary group, it's not fairly representing the income in South Carolina, so it's a little different.

Q I appreciate that difference. So the Department is not arguing in this case that these entities, the Tractor Supply entities, are shams or anything of that sort?

A Correct.

Q And just to be a little more specific, you're not saying that the Tractor Supply entities are a sham, and you're not saying that they lack economic substance, and you're not saying that they lack a business purpose, just to be --

A Correct.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q I just asked that question about the business entities. Does the same apply for the agreements? So, in other words, you're not saying that any of the agreements between the entities are shams, lack economic substance, or lack a business purpose?

A Correct.

MS. WOOTEN: Object to form.

MS. GEER: Nikki, just so I understand and can correct my question, what is the basis of your objection to that one?

MS. WOOTEN: Legal conclusion.

MS. GEER: Okay. Thanks. Just making sure it wasn't that it was complex, because I can break it down.

MS. WOOTEN: No.

BY MS. GEER:

Q Let me ask that one just a little bit differently, just to sort of try to address the objection.

Are you aware -- so I don't want you to feel like you're making a legal conclusion. Are you aware of any -- is the Department asserting, from a factual standpoint, that any of the intercompany agreements lack substance or lack a

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

business purpose from a factual standpoint?

A No.

Q Let's move on to Topic 16. So this one is focused on the findings made by the Department in this matter regarding the business activities of the different members of the Tractor Supply group, so I'm going to break it down for you, just to make it more manageable.

What were the Department's findings regarding the business activity -- and let me preface this by saying, initially, you told me that you were looking at the business activity of the group, but I want to know from a factual standpoint, did the Department look at the entities separately, or did it only look at them as a unitary group? So did the Department make any factual findings as to what the business activity of just TSC was in South Carolina?

A No.

Q And I assume the answer's going to be the same, but did they make any separate findings as to the business activity of Tractor Supply Company of Texas in South Carolina?

A No.

Q And same question for Tractor Supply of

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Michigan in South Carolina.

A No.

Q And is the Department aware -- I understand they didn't make any findings, but is the Department aware of what the business activities of Tractor Supply Company in South Carolina are?

A I'm sorry. Repeat the question to me. I'm sorry.

Q No. That's fine. Is the Department aware or does the Department know what the business activities of just Tractor Supply Company are in South Carolina?

A Yes.

Q And what are those business activities?

A That is the sale of rural products in their stores, and all their stores sell the same type of products, and the ones in South Carolina are consistent with the ones in other states.

Q And what about what are the business activities of Tractor Supply of Texas in South Carolina?

A They supply the procurement part for supply for the stores' retail operations.

Q And what about Tractor Supply of

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Michigan?

A I believe they do the employees.

Q Do they provide any employees in South Carolina?

A If I recall right, I think they do the employees for all of the entities.

Q And is the Department's position that the business activities of these individual entities is not relevant to the determination of whether the standard method fairly represents?

A No. We feel like the activities of all of them put together have some determinations into how we arrived at our conclusions.

Q Right. So, in other words, you think that it's dependent on what the unitary business's activities are in South Carolina, and you're not looking at what the individual entities do in South Carolina?

A Correct.

Q And just to be more specific as to one of the entities, so would you say that what Tractor Supply Company as an individual entity does in South Carolina is not relevant for purposes of determining whether the standard method of apportionment fairly represents the taxpayer's

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

business in South Carolina?

A Let me think about that question for a second.

Q I know. It's a long one.

A It's a long one. We look -- we look to see what the business activity is for the group.

Q Right.

A And how that relates to South Carolina.

Q Okay. And so what Tractor Supply Company individually does in South Carolina is not relevant for that determination?

A That is correct. They look at it as a whole.

Q I asked a much shorter question that time. I need to shorten up my questions.

A There you go.

Q Let's go to Topic 17. So this one's focused on the Department's decision to invoke South Carolina Code 12-6-2320(A) and its consideration of alternative methods other than combined unitary reporting.

So if we start with the first part of that, I think I understood your testimony earlier to say that although the Department has the option of whether to invoke alternative apportionment, it

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

always does so if the standard method is not fairly representing the taxpayer's business activity in the state. Is that correct?

A Yes.

Q So as far as why did the Department decide to invoke it in this case, it decided to because it, as a matter of practice, always invokes it when the standard method is not working?

A Yes.

Q And then in this particular case, did you all consider any methods other than combined unitary reporting?

A To be consistent, we use combined reporting.

Q And when you say "to be consistent," the Department, as a matter of practice, always imposes combined unitary reporting?

A Correct, correct. We have guidance for the combined reporting from 15-5, and we feel like that it's backed up by the 2320(A)(4). Other methods may not be backed up in the same manner.

Q And so for all taxpayers, not just Tractor Supply, you don't consider other methods?

A Correct. We wouldn't be consistent if we did.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q Let's go to 18. So this one is looking for all factual support for the Department's position that combined unitary reporting is a reasonable and equitable alternative method in this matter.

What are the facts that the Department is relying on to show that combined unitary reporting is reasonable and equitable?

A The facts that we spoke about earlier. It's in the Department determination on Page 7, I think it was.

Q So correct me if I'm wrong, but I think there's like a whole section separate from -- like the section that you and I were looking at earlier was dealing with whether the standard method works. I think you guys have a different section, Section II, starting on Page 15, that deals with combined unitary reporting being a reasonable alternative apportionment method.

And then let's see if there's a section with the facts. And then that kind of sets forth the law to begin with, and then on Page 16, when it starts talking about Tractor Supply as part of a unitary business, I'm reading that to be where you kind of start talking about the facts that

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

support --

A Yes.

Q -- combined being reasonable. So one is that it's a unitary business, and then you talk about that none of the entities can operate or function without the others?

A Correct.

Q And then I think there's some additional discussion of unitary. And so as I read that section, I saw there were numerous facts, but they were all facts related to the fact that Tractor Supply is a unitary business. Is there anything beyond them being a unitary business and the facts that would support that finding that the Department is relying on as far as combined reporting being reasonable?

A No. That's it.

Q And this is a little -- so this may be one where y'all tell me I need to ask Orville, but this is where the topics overlap a little bit. So Orville is covering a topic that discusses kind of whether the Department -- what the Department's position is on whether reasonable and equitable, as used in the statute, what that means, are those two different things or not, so I'm going to ask

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Orville about that, but for the factual basis, I was going to ask you are there any different facts that support the reasonable versus equitable, or is it the same facts that are supporting reasonable and equitable?

A I think it's the same.

Q And those facts are that it's a unitary business?

A Right.

Q And then the statute requires that the alternative method be apportioning the taxpayer's income?

A Uh-huh.

Q Am I correct that you're viewing that as the unitary business income?

A As a whole, yes.

Q And so you would agree that the Department is not looking at whether combined unitary reporting is apportioning Tractor Supply Company as an individual entity's income in South Carolina?

A Correct.

Q And so it doesn't make a difference to the Department whether Tractor Supply, as an individual entity, made money or lost money in

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

South Carolina because you're looking at the unitary business's income?

A Yes, correct.

Q Let's move to Topic 21. So the next two exhibits --

MS. GEER: Actually, Marie, can you tell me, didn't we -- we already made the Department determination an exhibit, correct?

So the next exhibit is going to be the May 3rd of 2018 Explanation of Audit Assessments and Adjustments.

(Exhibit 6, Explanation of Audit Assessments and Adjustments [TSC 8-14], was marked for identification.)

BY MS. GEER:

Q And Rob, for our purposes, I'm just going to refer to that generically or generally as the audit report, just to not have to say that mouthful. Is that fair?

A That's fair.

Q And actually, I didn't -- when I did these topics, I had not studied the assessment. I'm actually not going to ask anything about the assessment. I'm just interested in the audit report and the determination.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

You've read both of those, correct?

A Yes.

Q Are you aware of any factual statements in the audit report that are incorrect?

A Not to my knowledge.

Q And are you aware of any opinions or positions that are stated in the audit report that are either inaccurate or are no longer the opinions or positions of the Department?

A Not to my knowledge.

Q And then I have the same question for the determination. Is the Department aware of any factual inaccuracies in the determination?

A No, we're not.

Q And same question as to opinions or positions. Are there any that are inaccurate or that are no longer the Department's position or opinion?

A No.

Q And so is the Department aware of anything that would be needed to update the Department determination in order to have it contain all of the Department's current positions?

A No.

Q And a similar question, but as of today,

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

does the determination contain all of the reasons that the Department believes that the standard method does not work in this case?

A Yes.

Q And does it contain all of the reasons that the Department believes that combined unitary reporting is a reasonable alternative method?

A Yes.

Q Let's move to 22. I think we've kind of covered everything, we've hit on this transfer pricing topic under other topics, so let me just look real quick and see if there's anything that is not covered.

All right. I think I've covered everything. Just because this one particular question is worded slightly different than how I worded it earlier, and I don't know -- I'm not sure why I worded it differently, but anyway, I'm just going to ask it to make sure. I think I know your answer.

But if the price paid to Tractor Supply Company of Texas for the procurement services during the audit period is determined to be an arm's length price, do I correctly understand the Department's position to be that the standard

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

method would still fail to represent the taxpayer's business activity in South Carolina?

A Yes.

Q Let's go to the last topic. This one deals with prior audits. I think you mentioned earlier that you might have been involved in some prior audits. Is that correct?

A Yes, yes, I did.

Q So I'm aware of one that was a 2006 audit, a 2012 audit, and then the current audit?

A I think I did the '12. I think I did the one before this one.

Q So in 2006, my understanding is that the Department in that audit claimed nexus over TSC of Texas. Is that -- are you familiar with that in the audit?

A I'm not familiar with that, no, ma'am.

MS. GEER: And Nikki, can I assume that no one is familiar with -- y'all were not able to determine anything about the 2006 audit?

MS. WOOTEN: So part of the problem is -- if we can go off the record.

(The deposition went off the record.)

BY MS. GEER:

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q Well, I was going to ask you what the basis of that nexus claim over TSC of Texas was in that audit, but I assume you don't know the answer to that either?

A No.

Q Does the Department believe that it has nexus over TSC of Texas now?

A No.

Q Tell me about your role in the 2012 audit, or what you remember.

A I think I performed that one.

Q By yourself?

A I'm pretty sure I did.

Q And did you actually go to Tennessee?

A Yes.

Q And what do you remember about that audit?

A I'm pretty sure that that was a unitary audit, and we went through the same type of analysis and so forth, came to a conclusion, did unitary, I think. I think -- I don't think they protested it. I think they paid that one in full, if I remember right.

Q So my understanding is that it was a unitary combination and that -- but it was only for

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

TSC and TSC of Texas, that TSC of Michigan was not included in the group?

A I saw that they had -- that the Michigan group name was on the -- in the audit, but I didn't see any income source associated to them, so I may have not included it. I may not. May not have had -- and as you see, 15-5 kind of gives some different guidance, but back then, I was looking basically what was causing the distortion, and it may have been -- may have determined that it was the Texas. And probably could have done it either way. I probably -- in looking at 15-5, probably should have included Michigan.

Q And then my understanding is that the Department issued an assessment for, let's see, I think it was around $458,000 total, including tax, interest, and license fees?

A Sounds correct.

Q And that the parties entered a settlement for the amount of $206,000 and change. Do you remember that at all?

A I don't. I wasn't privy -- I wasn't privy to the settlement part of it. Bryson, it could have been we did a six-year audit, and they cut it to three, or something like that. That

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

could be what it was, too.

Q Let's see. I have that the period for that one was 12/31/08 to 12/31/2010, so I think it was not a six-year.

A Okay. Just three.

Q Yeah. So basically --

MS. GEER: Can we go off the record for a minute?

MS. WOOTEN: Sure.

(The deposition went off the record.)

(A luncheon recess transpired.)

BY MS. GEER:

Q So I did have a few extra questions, and I remembered also -- Rob, I don't know if Nikki told you, but we had that one question where you were going to go back and look at the revenue ruling, so I did want to make sure I got that from you as well. Do you want to start with that?

A Yeah. It's on the bottom of Page 9 of 15-5. It's under "Step-by-Step Approach to Calculating Combined Unitary Income." That's where it's mentioned. It's the second --

Q Yeah, I see it.

So just to follow up on that, Rob, so as

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

I'm reading that, it says when the Department requires or allows a unitary group of corporations to use combined unitary reporting, we're going to use this following methodology, and the term "taxpayer," as used in this discussion, is the combined unitary group.

So just to make clear, I was asking you whether there was any -- I guess that's -- so what you're saying is that that is where the Department advises that -- I guess that -- I just want to make sure the connection is it's not just this discussion that the Department is using "taxpayer" to be the unitary group, it's also the Department's analysis of the statute's use of that term?

A Yes.

Q All right. Perfect. So I asked you about -- so this is going -- I'm going to kind of jump around, because I basically just went through my outline and tried to figure out if there was anything I had skipped over, so I apologize for being a little jumpy.

MS. WOOTEN: Can I ask a question real quick?

MS. GEER: Yes.

MS. WOOTEN: So are we still on the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

30(b)(6) or --

MS. GEER: Yes.

MS. WOOTEN: -- are you moving --

MS. GEER: No, still on the 30(b)(6).

BY MS. GEER:

Q So when we were talking earlier, I asked you about what the business activity of the individual Tractor Supply entities was, but I forgot to ask you what the Department's finding -- I think I did, at least, what the Department's finding as to the business activity of the group was.

A And your question is?

Q What is the business activity of the Tractor Supply group?

A Right, and we find that the business activity of the group is the retail operations of Tractor Supply. They're in the business of doing retail sales, Tractor Supply. That's what our business -- what we considered business activity.

Q So are you not also viewing the procurement activities as being the activities of the unitary business?

A Well, we're looking at the unitary business as a whole, what do they do, what do they

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

do, what are they in the business of doing, and that's that part, if that's what you're asking as a whole what are they doing. Each individual affiliate has their own functions within -- to make that happen.

Q But you view the procurement activities -- I mean, we all agree that those procurement activities are taking place, right?

A Right, right, yeah, yeah. We're not arguing that they're not.

Q So you're viewing the activities -- those activities to be the activities of the whole group?

A Right.

Q Not just Tractor Supply Texas, in other words?

A Correct, correct.

Q Okay.

A Sorry about that. I'm talking over you again.

Q No. It's okay.

A Got to get used to it again.

Q And then I know you said that you didn't see anything in Steven Riggs's deposition that you disagreed with or you thought was inaccurate, but there were a couple things where it's a long

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

deposition. I'm sure there's a chance that you might have skipped over something. So there were a couple where I was really interested where I was going to call those out to you and make sure that you agree with those.

A Okay.

Q So one of them is he said that the term "distortion," to him, means the same thing as that the business activity is not fairly represented in the state. Do you view those the same? Is that accurate?

A I'm thinking of your question again. Do I feel like they're the same terminology?

Q Yeah. In other words, he sort of used those synonymously, like "distortion" basically meant that the taxpayer's business activity wasn't being fairly represented.

A I don't really disagree with that statement. It's -- except for it doesn't represent their activity, but why, and distortion is why, so it's kind of -- it's the reason.

Q And then he also said that in the Tractor Supply case, that the existence of the intercompany payments from a South Carolina filer to a South -- sorry. To a -- I guess it would be -- a South

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Carolina nonfiler, a nonfiler in South Carolina affiliate, that that, in his mind, was distortion.

A It could be. I don't know if it's necessarily end all that that -- you can arrive at that, but it is one of the factors that we talked about earlier of those six factors.

Q So you would view that as potentially distortive, but not necessarily distortive?

A Yes, yes.

Q And then he also said that if Tractor Supply Company was paying the procurement charge to a third party, that in his mind, there wouldn't be any distortion and that the Department wouldn't have an issue with that or say that that caused the taxpayer's business activity not to be represented in South Carolina. Do you agree with that?

A And I think where he was going with this, and I agree, is -- and I think you asked that question to me in a roundabout way. If you made that payment to a third party, that changes all the facts and how profitable the company is and so forth, so, you know, if they're not -- if they're paying that to somebody else, that company has those profits and so forth, whereas, Tractor Supply no longer has those, so we couldn't say it was

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

distortive because those profits would no longer belong to Tractor Supply.

I know that was a long answer.

Q No. It's helpful. Thank you.

This question just relates to that whole decision about whether the standard method is fairly representing a taxpayer's business activity, and I wanted to just put some numbers on it. And I'll just tell you at the start that I'm trying to get a feel for how much of the Department's analysis on this question is numbers-based and how much is just non-number/fact-based, if that makes sense, so let me -- I just wanted to kind of give a heads-up as to why I'm asking it this way.

So I wanted to just look at the 2014 numbers. And I'm going to give you rough numbers. Approximately $4 million of income is apportioned to South Carolina for 2014 under the standard method, and then under the combined unitary reporting method, it's about $13 million of income to South Carolina for Tractor Supply for 2014. So $4 million under the standard method, $13 million under the combined unitary reporting method, so a difference of around $9 million.

And I know earlier you said there's no

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

bright line, it's hard to say what the lines are, but I'm curious like is there a number south of $13 million, but north of $4 million, that the Department analyzes and says, yeah, I think the standard method fairly represents their activity, or is there no number other than the $13 million that's going to work?

A We wouldn't put a number that way. It would be the facts, like you said, either/or. It would be more the facts itself, not a number. The number could be less than that, could be more than that, but that's -- just because it's $13 million is not why we would do it. Or $9 million, excuse me, $9 million difference.

Q And so is it fair to say that the Department isn't actually really looking at what the income number is, but rather, it's looking at the six factors? Let me flip over to those.

A I think when they get into -- when they get into the numbers, it goes through that formula, so it's an apportionment ratio times income. So yes, the income does get looked at, because that's how we determine it, but that doesn't -- looking at the income solely does not necessarily make that determination. It's kind of how they relate to

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

each other with those six factors we talked about.

Q But the six factors are not looking at any numbers, really.

A Right.

Q Right?

A Right. They're looking for causes and what's -- what may be causing that and explaining the intercompany outside -- would the company do this with a third party and so forth. And so yeah, it kind of comes back to that, but we're not looking at the actual dollar amount, we're looking at -- because it could be a smaller amount, and it could still be a unitary, not fairly representing the activities in South Carolina.

Q Well, yeah, and I guess that's what I guess I'm trying to get at. So when you look -- because when I look at the six factors, none of those factors are looking at any particular income amounts or numbers at all, really. I mean, it's just looking at --

A Right, right. It's trying to determine whether it's unitary or not.

Q Well, so, I mean, some of them may deal with unitary, but like the six factors, I'm just looking at them right now. The first one was

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

whether or not they're actually paying the intercompany charge. One was whether they have different profit levels or not. You said the capital investments wasn't relevant to this case. And then four, five, and six were all kind of similar, and it was just basically would somebody -- would a third party enter into this agreement.

So I'm trying to figure out if -- and you may tell me that the numbers don't matter, but I'm trying to figure out if the numbers do matter at all, and if so, where, and how you draw the lines.

A I don't -- I don't think there's a line that we can draw. Like we talked about earlier, there's not a bright line. I know I used that term, and that's in there. So it could be -- it could be a smaller amount, but still not representing their income here if we're shifting it somewhere else, and we find that they can't function as a -- you know, independently and so forth. So that's where we're talking about where without each other, does it work, and that's kind of what we're looking at. And when they put them together, would the whole income be showing where there was distortion or there was not fairly

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

represented income in our state.

Does that answer it a little bit better?

Q Yeah, a little bit. Let me give you like another example and see if I can make sure I'm following you.

A Yeah.

Q So, for example, if the facts in our case were Tractor Supply -- or they are. Tractor Supply is journal entering the charges. Tractor Supply, there are different profit levels. And under four, five, and six, the Department determined that they didn't think another party would enter into this agreement. So let's say the numbers were not four and 13, but like 12 and 13. Does the number play in at that point, or because you've made those other factual conclusions --

A Right. It could still -- it could still be distortive in that way, even on a smaller number, so that's why I say the number doesn't necessarily dictate that situation, but it would be a harder case to prove that way, but it could be.

Q So, basically, if I'm following you correctly, it doesn't matter what the difference is between the standard method and combined unitary reporting method. As long as you've made the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

factual findings under those six factors in Revenue Ruling 15-5, if you've made factors which you feel like support that the standard method doesn't work, then any difference in those numbers could be enough for you guys to say there's distortion?

A It could be. Some are bigger than others, yes.

Q And really, the only one of those six factors that's looking at numbers of any kind is Number 2, the profit margins. In that one, you are comparing the profit margins of the entities within the group?

A Correct.

Q And different -- I think you told me that different profit levels can indicate distortion?

A Correct.

Q And you said you would just look at whether the differences in the profit margins are justified?

A Yes.

Q So it's not that -- just because you have a difference in the profit levels, that doesn't necessarily mean distortion?

A Right.

Q And so as far as determining whether the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

profit margins are justified, you don't have any bright lines on that either, you're just looking at what each side is doing and what each side is receiving, and you're trying to make a determination as to whether that's fair?

A Correct.

Q And what, if anything, are you like looking at to make that determination of whether that's fair? Like I know you said you weren't looking at the transfer pricing for that purpose. Is there anything else, like economic or mathematical analysis, that you're looking at to make that determination, or is it just more of looking at the factual circumstances and trying to decide whether you think it's fair?

A Look at the factual circumstances.

Q So y'all don't have any like data from third parties that says this is what a normal profit level for this --

A No, we do not.

Q -- activity would be. Okay.

All right, Rob. I think I'm done with you. Nikki might have some questions for you, but otherwise, we can be done.

///

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

EXAMINATION

BY MS. WOOTEN:

Q If you pull up the Department determination, I think it's Exhibit 5. You don't have it labeled as five. I think it's labeled for this deposition as five. Just let me know when you get there.

A Okay.

Q Earlier in the deposition, at the very beginning, Ms. Geer walked you through what she characterized as a three-step process regarding the statute and invoking alternative apportionment. Do you remember that conversation?

A Yes.

Q If you'll look at the DD. And looking at the first page, does the Department view that as a three-step process, if you're looking at the matters in dispute?

A Yeah, two.

Q Did you answer? I can't tell if you answered or not.

A Two. You have it at two.

Q Do you see a three-step process anywhere on that first page?

MS. GEER: Object to the form.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

THE WITNESS: No.
BY MS. GEER:
Q She also asked you about legal authority the Department relied upon, and I believe you cited -- well, tell me what you cited. I won't repeat it. Do you recall what you mentioned as the legal authority?
A The Code Section 2320 and Media General.
Q In looking at the Department determination, does the Department determination list any other legal authority besides the statute and Media General?
MS. GEER: Object to the form.
THE WITNESS: It referred to Hertz Corp.
BY MS. GEER:
Q I'm not asking you to list everything. I'm just asking is there any other legal authority cited in the Department determination?
A Yes, yes.
Q Still looking at the Department determination, Ms. Geer asked you questions about the Department's support, factual support, for our determination in this matter. If you'll go to Page 2. What is the title of the section on Page 2 of the DD?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A "Relevant Facts."
Q And how long does that section continue in the DD?
A Through Number 16.
Q On what page?
A Five.
Q If you'll go to Page 3.
A Okay.
Q Ms. Geer also asked you about whether or not the Department viewed or analyzed the business activities of each member of the Tractor Supply group. Do you recall that?
A Uh-huh.
Q Looking at Page 3, do you see any facts or relevant analysis for entities within the Tractor Supply group?
A It defines what each company does, yes.
Q Is there anything for Tractor Supply Company of Michigan?
A Yes.
Q And what about Tractor Supply Company of Texas?
A Yes.
Q Ms. Geer also asked you some questions related to whether the Department looks at the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

business activities of Tractor Supply versus Tractor Supply group. If you will refer to Page 6 of the Department determination.

A Okay.

Q And halfway through that paragraph, there is a sentence that starts with, "As a result." Have you found that?

A On Page 6?

Q Yes.

A Yes, yes.

Q Could you read that sentence that begins with, "As a result"?

A "As a result, Tractor Supply's use of separate entity reporting during the periods at issue does not fairly represent the extent of its business activity in this state."

Q Ms. Geer also asked you, again, some more questions about the business activity of the group versus Tractor Supply Company. What's your understanding of the group's primary business activity in South Carolina?

A That they're in the business of selling retail rural products to their -- to their niche group of customers.

Q And, now, what is your understanding of

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

what Tractor Supply Company's business activities are in South Carolina? The parent company, not the group.

A The parent company.

Q Right.

A I still feel like as a parent, that's their -- their ultimate business activity is in the business of selling retail.

MS. WOOTEN: Okay. I think that's it, Bryson.

MS. GEER: I have one follow-up to that.

EXAMINATION

BY MS. GEER:

Q So, Rob, I had asked you about all of the factual support for the Department's position that the standard apportionment method was not working, and you gave me a couple of facts, and then Nikki, in response to that, I think just asked you to look at that there are five pages of facts --

A Uh-huh.

Q -- in the determination. So I'm looking at -- I can't tell which of those facts are just background facts and which of those facts support other things. I'm trying to figure out, so I'm not surprised at trial, what facts does the Department

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

say support that the standard method isn't working here? So that's why I'm trying to get you to narrow down the facts for me so I can tell which ones are important to your decision.

So I thought I had it kind of narrowed down to what you thought, but then I feel like there's some ambiguity now because we've referred back to all the facts in the determination. So can you tell me what of those facts that are in the determination relate to and support the Department's position that the standard method doesn't work here?

A I've got to find it. Hold on. And some of those -- like you say, some of them do describe the company itself, which is relevant, so we want to find out -- and that's stuff that we find from 10-Ks and 482s and so forth, and that's a lot of the beginning stuff through the first four things -- five things. Six describes the ownership of it. Then you've got the agreements in Number 7, which is relevant.

You were going to ask something? I'm sorry.

Q No. Sorry. I was just saying yes. I see where you're saying.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A And I'm just going through each one and see.

Q Perfect.

A Number 8's just looking at the back audit and how we treated it. We looked at this independently, but that is a fact I guess for the courts, but as far as we were going, we looked at it in a fresh look to see what they were doing.

And nine's kind of explaining how they got to where they are filing-wise. 11 as well. And 12's describing the audit. 13 is when we assessed it. 14's when you protested. 15 is when they had a conference call with appeals, which is separate from audit. And then 16 is how it ended up in litigation.

Does that help?

Q Yeah. So other than what you told me earlier and what you've pointed to just now, those would be all the facts that, in your mind, affected the opinion that the standard method doesn't work here?

A Right.

Q All right. That's all I had.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

ORVILLE SHARPE

being first duly sworn, testified as follows:

EXAMINATION

BY MS. GEER:

Q Hello, Mr. Sharpe. How are you?

A Hey. How's it going?

Q Good. For purposes of the deposition, you can feel free to call me Bryson. Would you prefer that I call you Orville or Mr. Sharpe?

A I prefer Orville.

Q Perfect. All right. So I appreciate you coming today and your time. We're here to take your deposition pursuant to the South Carolina Administrative Law Court rules.

And you're here based on a 30(b)(6) notice that has been sent by my client, Tractor Supply, to the Department, and so there are a number of topics on that notice, and Rob King covered a good portion of them, and I understand you're covering the remaining ones.

Have you looked at the 30(b)(6) notice?

A Yes, I have.

Q And we have that here as an exhibit, if you need to refer to it at any point, but I'll just go through the ones that I understand you're

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

covering. If at any time you think that that is not a topic that you're here to cover, just let me know; otherwise, I'm going to understand that you're comfortable with speaking on behalf of the Department for those topics.

A Okay.

Q And then I will have a couple of questions for you at the beginning just to get a little bit of idea of your background, but I'll let you know as soon as we move from the background section into the actual 30(b)(6) topics.

All right. And I know you've had your deposition taken before, so you're familiar with the general ground rules, but I'll just review them real quickly.

If at any time you don't understand my question, just ask me to rephrase it. I'll be glad to do that.

Talking over each other. I have a problem with that. Rob King and I both had a problem with that last round. It's sometimes hard to tell when somebody stops -- finishes their question, especially if you're on top of things like he was and knew where I was going with some of them, but if we could both try to do a good job of

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

waiting for the other person to finish their question, and I'll try to do a good job of waiting until you finish your answer so that the court reporter is not trying to take down both of us talking at the same time.

A Okay. One thing I wanted to mention is that sometimes I have a tendency to read the -- when you ask me a question, I'll say it out loud, and I think that means that the court reporter's got to enter that twice, so if I'm doing that, tell me not to do that, because I know that I've been -- I have a tendency to do that. I kind of read it out loud so I can think about the question, but --

Q Yeah. I understand. Sometimes that helps you make sure you heard it correctly just to say it again, but that's not a problem for me.

A Okay.

Q And let's see. Objections. Your attorney may make objections during the course of the deposition to my questions, which she's trying to preserve those for the record, but unless she instructs you not to answer, then you're to go ahead and answer them after she makes her objection.

Breaks. We can take a break at any

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

point. So I'll probably take one -- we've, without you, been going for about half an hour, so I'm probably going to take one in about an hour if we're not finished by then, but if you need one sooner, just let me know, and we can take one.

A Sure.

Q Do you have any questions before we get started?

A No.

Q If you could state your full name for the record.

A Orville C. Sharpe.

Q And I know you've been deposed before. About how many times?

A I don't know. I would say eight or nine, but I'm not exactly sure.

Q Any of them with issues similar to the issues in this case?

A Yes.

Q How many?

A Two or three.

Q And were those cases in which the Department was invoking alternative apportionment and applying forced combination on a taxpayer?

A Yes, I believe so.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q So you said two to three cases. Did any of those cases go to trial?

A One of them.

Q And did you testify at the trial?

A Yes.

Q And what was that case?

MS. WOOTEN: He's asking if he can answer, and I'm telling him he can answer.

THE WITNESS: Auto Zone.

BY MS. GEER:

Q That was the case that got interrupted by the hurricane, right?

A Yes.

Q And so of the other one to two cases, did those cases -- are those cases still pending?

A I don't remember, to be honest with you. I'm not sure if we settled them. But I'm just guessing that it was one to two, but I just don't remember. I'd have to go back and look at my emails.

Q And if you could run through for me just your educational background.

A Okay. I graduated from the University of South Carolina with a BA and with a major in accounting, and I'm also a CPA, so -- I graduated a

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

long time ago, 1975.

Q How long after that did you get your CPA license?

A I think I got my CPA license around -- I'm thinking around the early '90s.

Q And is that still active?

A Yes.

Q And if you could run through your employment history with me.

A With the Department of Revenue, right?

Q Did you have any other employment after -- postcollege, prior to the Department of Revenue?

A Yes. I was an internal auditor for a bank for about two-and-a-half years, and then I started working at the Department of Revenue in 1978.

Q Yeah. Just start with that, please.

A Started working at Department of Revenue in 1978 as a sales and use tax auditor, and I think that I did that until maybe '95 or '96, and then I became a corporate income tax auditor for multistate taxpayers, and I did that until October 2019, when I became a foreign audit supervisor, and currently, I supervise six foreign

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

auditors.

Q So until you became a foreign audit supervisor in 2019, were you actually out there doing audits yourself?

A Oh, yes. Back then we traveled all over the country, but now, with COVID, we very rarely, if ever, travel anymore.

Q And then once you became an audit supervisor, did you quit doing the audits yourself and just supervise others doing them?

A Yes.

Q And were you involved in this particular audit of Tractor Supply in any way?

A No.

Q What about prior audits of Tractor Supply?

A No. I've never been involved with this one.

Q About how many audits in your work history involved combined alternative apportionment combination cases?

A Do you mean alternative apportionment or just unitary combinations?

Q Well, alternative apportionments that were -- where the alternative method chosen was

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

combined unitary reporting.

A As an auditor? I'd probably say maybe ten or 15. I'm not sure exactly how many.

Q But you have a fair amount of experience with those?

A Yes, I do.

Q All right. I'm going to switch over now to the 30(b)(6) topics. The first one that you are identified for -- let's see. Okay. Do you have access to the exhibits, Orville?

A I think I have them. Let me see. I'm not sure how to get out of here. Do I click leave? Okay. I've got some of them, I believe.

Q The one that I'm going to ask you about first is the statute, the 12-6-2320.

A Actually, I don't have that.

Q Of course the one I want to ask you about is not there.

A Okay. I've got it. It's in a book that she provided.

Q All right. And so, Orville, I'm going to preface this with saying that there was some overlap in these topics where sometimes Rob ended up addressing through another topic an issue that might be covered in one of yours, so just in

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

fairness, like I don't want to cause any issues with you not knowing what he's already testified, so where I can recall that he's already said something to a particular topic, I'll try to give you a heads-up as to what his testimony was on that issue.

So the first thing I'm looking at is just the term "taxpayer" as it's used throughout the statute. I think you're on mute.

MS. WOOTEN: We're getting that feedback again from you, Bryson.

THE WITNESS: Can you hear me, Bryson, now?

BY MS. GEER:

Q Yes.

A I just wasn't talking. I was listening to you.

Q Oh, okay. Sorry. I thought you were trying to say something.

So the first issue that I'm going to ask you about is just the use of the term "taxpayer" in the statute. And I'm going to try to paraphrase what Rob said earlier, and basically, he said that in general, "taxpayer" means the taxpayer that's filing in South Carolina, but where you have a

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

unitary business, then the Department views "taxpayer" as being the unitary business.

So in the beginning, where it says, "If the allocation apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in the state," he said that the Department would be looking at the unitary business's activity in this state.

And then where it says -- let me see -- under A(4), "The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income," he says that where you have a unitary business, the Department is looking at the unitary business's income.

So this topic is actually listed as under you, but I wanted you to know that's what Rob said, and I assume that that is your understanding of those terms as well, but let me know if there's any differences.

MS. WOOTEN: Sorry, Bryson. We are getting a lot of feedback, and so about every third or fourth word is being chopped out because of static.

MS. GEER: I don't know why that would

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

be. Let's see.

MS. WOOTEN: And I'm muted on my side, so that's not the problem.

MS. GEER: Maybe Orville could mute while I'm asking the question and see if that helps. I can't obviously mute while I'm talking. I'm just trying to think of what other variables there could be.

BY MS. GEER:

Q So, Orville, the question is does the Department view "taxpayer," as it's used both in Subsection A and A(4), to be the unitary business when the taxpayer is a unitary business?

A I think we view it as if we use an alternative apportionment method based on a unitary forced combined, then we would continue it a unitary business, but I don't think that we would -- we would include that unitary business one business, but if it was unitary and there wasn't any distortion and we didn't propose any type of alternative method, then we wouldn't -- we'd include just the taxpayer as one taxpayer within that group.

Q So, for example, in A(4), if you've decided to impose alternative apportionment on a

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

unitary business and you're employing a different method to effectuate equitable allocation and apportionment, are you doing allocation and apportionment of the taxpayer that's filing in South Carolina's income, or are you doing an apportionment of the unitary business's income?

A Well, you have to first determine what the business activity of that taxpayer you're auditing. If you imposed a unitary combination, you have to include the whole income for that one taxpayer, because that's the only way you can determine what the South Carolina business activity is because of all the intercompany shifting via the intercompany agreement.

So I'm not sure how to answer your question. If you're doing -- if you've determined that the taxpayer is not fairly reflecting their business activity in South Carolina, and the method you choose is a unitary combination, then the unitary combination is one taxpayer, because that's the only way you can determine the business activity in South Carolina is to include the combined income for the whole unitary group.

Q So I think you're saying you agree with me, yes, that you are -- if you decide that you're

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

going to do combined unitary reporting, you're not apportioning just the taxpayer's income, you're apportioning the unitary business's income, correct?

A Yeah, you're apportioning the unitary business's income, but you're only taxing the business activity that occurs in South Carolina.

Q So if I'm understanding you correctly, then, in the first paragraph, Paragraph A, when it says, "If the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in the state," you're saying that what the Department is looking at there is, in fact, just the South Carolina entity that's filing business activity. Is that right?

A Yes, yes. And even if they file -- even if we require a unitary combination, we're still looking for the unitary -- for the activity, the business activity, of only the entities that are filing in South Carolina or should be filing in South Carolina.

Q So under A, you're only looking at the taxpayer that's filing in South Carolina's business activity in the state, but under A(4), when we see

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

the word "taxpayer," you're using the unitary business's income, not the South Carolina filer's income?

A Well, if we're doing a unitary combined, we're starting with the combined unitary income, but we're only taxing the activity for the entities that are located in South Carolina or should be located in -- should be filing in South Carolina, because that's the only way you can determine the business activity for the South Carolina entities is by taking the whole bucket of the unitary activity, because a lot of times, most or all of the income has been shifted away from the entity, or entities, that are filing in South Carolina because of the intercompany agreements that shift the income away from South Carolina.

Q Okay. I think I'm following you now.

And so on that A(4), "The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income," and you're saying that you looked to the unitary business's income to do that, is there anything beyond the statute that the Department is relying on as the basis for doing that?

A Well, we have the Media General case and

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Revenue Ruling 15-5.

Q And then I wanted to ask about in Section A, the last caveat at the bottom, which says, "If reasonable," what is the Department's understanding of the term "reasonable"? How does it define that?

A Well, it's actually described in Revenue Ruling 15-5, and it just basically means that if the taxpayer were filing a unitary combined return in all 50 states, they wouldn't be required to tax more than 100 percent of their income, and the unitary combination or alternative apportionment method should reflect the economic realities of their business activity in South Carolina.

Q And do you view that as a limitation that applies to all of the options in A(1) through (4)?

A Yes. The income is -- the alternative apportionment method has to be reasonable.

Q And then if you look in A(4), it has an additional requirement where it says, "The employment of any other method to effectuate an equitable allocation and apportionment." So what is the Department's position on what "equitable" means, synonymous with "reasonable," or if there are some differences there?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A Yes, I would say it's synonymous with "reasonable."

Q So from the Department's perspective, there's nothing -- if something is reasonable, then it's going to be equitable. There's not any -- there's not a different hurdle to clear?

A No. That's the -- also, I should have indicated Carmax also indicated. That's the only thing we have to determine in using alternative apportionment is that it's reasonable. We have the burden, and the method has got to be reasonable. That's -- Carmax indicated that. I forgot to mention that case earlier.

Q That's okay. I'll add that. And so just -- because I think you -- I want to make sure I got your clear answer on the first. So you don't view "equitable" as adding any additional requirement, you view it as being synonymous with "reasonable"?

A Yes.

Q And as far as the "equitable" term, that's only used in A(4), correct? None of the other ones say anything about being equitable?

A Not that I can recall.

Q All right. I'm moving on to Topic 4. So

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

let me ask you this: So Tractor Supply filed a separate tax return in this case, and it apportioned its income using the single sales factor as its apportionment method. Is that your recollection?

A I don't recall how old this is, because I don't know if you know this -- you probably do -- we used to be a four factor state. So I'm not sure of the audit years, how old it was, so it depends on -- what were the audit years? I don't remember the audit years.

Q I think it's '14 to '16.

A Okay. Yeah. It would have been on one factor. It would have been on the sales factor.

Q So they filed a separate return based on the single sales factor, so in that particular case, would you agree that Tractor Supply's reporting method was separate reporting, and their apportionment method was the sales factor?

A Yes, I would agree.

Q And then the Department's approach was it to use combined unitary reporting as its reporting method and the single sales factor as its apportionment method?

A Correct.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q I'm going to switch over to Topic 8. So this topic deals with the standards used by the Department to determine whether the standard statutory method fairly represents the taxpayer's business activity in South Carolina.

My understanding from Rob is that Revenue Ruling 15-5 would be y'all's primary written policy or procedure on that. Is that your understanding as well?

A Yes.

Q Is there any other written materials that the Department has that the auditors use in order to assist them in making that determination?

A If we had other audits, we probably would have shared the audits with another auditor who may have been utilizing unitary combined reporting, so we would share our audits probably with the newer auditors if they were writing something up.

Q Oh, I see. Like as an example?

A Yes.

Q And what is the Department's -- I know I've heard of some auditors that do both a qualitative and quantitative analysis when they're making this determination. Is that something that is done on every audit, or only on certain audits,

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

or what's the Department's policy or procedure on that?

A What period are you talking about?

Q Well, let's say -- let's see. What did we say on the notice? I think we said from '14 through '19, 2014 through 2019. And just tell me if there's differences in your answer across the time period.

A I'm sorry. Can you repeat the question? Because it got cut off.

Q What is the Department's policy regarding whether an auditor should perform a qualitative and quantitative analysis when they're making the determination about whether the standard method fairly represents a taxpayer's activities?

A I think that there wasn't any standard in place. It depended on the auditor, and the purpose of the audit was to just prove that the taxpayer's standard reporting method did not fairly reflect their activity in South Carolina and that the unitary combination was a reasonable method to determine their income in South Carolina.

I think different auditors did it different ways. Some people actually did the quantitative and qualitative distortion analysis,

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

and some people just did a write-up explaining the operation and describing why the taxpayer's reporting method wasn't -- didn't fairly reflect their business activity in South Carolina and why the method they utilized to determine South Carolina reporting -- South Carolina net income was reasonable.

Q So if I understood you correctly, there's no requirements that auditors use the quantitative and qualitative analysis?

A At that time, there was not.

Q And it was just up to the individual auditor to decide whether to use those or not?

A And I presume up to the supervisor, who I wasn't the supervisor at that time, to determine if it was -- it supported their position.

Q When you did audits, did you use a quantitative and qualitative analysis?

A Yes.

Q And did you always use both?

A Yes.

Q And why did you always use both?

A I just thought it supported my position.

Q Can you think of any reasons why you wouldn't want to use both of those?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A I think it depends on the facts and circumstances of the particular case, and if you can adequately support your -- the issue without doing that, the quantitative and qualitative analysis, and your supervisor agrees with your position, then it's not needed.

Q What about -- well, first, can you tell me, when you were doing them, what did you put under your quantitative analysis, and what did you put under your qualitative analysis? What did each of those analyses, were they comprised of?

A The quantitative was more the numbers of why is it distorted. It shows like -- for example, I would do a net taxable income return on income, and then I also did a net taxable income return on payroll, and also I did a net taxable income return on the assets, and it shows other distortion. If the entities who were reporting in South Carolina had a very low ratio, that generally indicated that they were shifting income from the entities filing in South Carolina to the entities not filing in South Carolina. That's kind of the distortion analysis, the numbers, what they reported, and things like that, and how it's distorted.

The qualitative analysis is a description

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

of the taxpayer's intercompany transactions, the 482 agreement, how the income is shifted from one entity to another and why we think that the standard method does not fairly reflect their activity in South Carolina and why we think that the unitary combination or any other alternative apportionment method is a reasonable alternative to the standard apportionment.

And also, we usually, of course, review the intercompany agreements, we describe the intercompany agreements, and the 482 agreement, we'll review that and describe that, and we also offer statutory support generally from the Media General court case and the statute, 12-6-2320, and the revenue procedure, Revenue Ruling 15-5.

Q And when you were describing the quantitative analysis that you do and those different calculations that you were talking about, are those sometimes referred to as distortion ratios?

A Yes.

Q And again, it's not -- using distortion ratios is not something that's required by the Department, correct?

A For the period that you indicated, no.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q Are they required in different periods?
A I require them on any audits that are submitted to me, yes.
Q But the Department as a whole doesn't, just individual audit supervisors do?
A I require them. We only have two foreign audit supervisors, and I'm not sure whether Linda requires them or not.
Q But during the audit period, or at least through 2019, your understanding is that they were not required?
A Yes.
Q But you have always required them?
A I'm trying to think, and I would say generally I have required them. There may have been one or two cases that I didn't require them, but I can't remember specifically, but as of today, I would require them on every audit, but when I first started, I don't know whether I actually required them on every one or not. I just don't remember. But I know today, yes, I would require it before I would approve the audit.
Q And why do you think -- why do you require them?
A Just because, as I indicated previously,

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

we think it supports the unitary combination. As I indicated, it shows why we think it's distorted and why we think the method that we used is reasonable. I don't think that it's necessarily -- I think you can still have a unitary combination without the ratios, but I think it adds additional support.

Q And you referenced earlier that the written materials that auditors would be able to look at in making these determinations would be Revenue Ruling 15-5 plus potentially any examples of older audits that had been done. Is there any other -- I understand that it's primarily on-the-job training that the auditors are --

A There's on-the-job training, and we also -- after Media General was decided, I think it was sometime after 2010, we actually had -- MTC came in and did I guess a class on -- it was two or three days long, I think, on unitary combinations, because we really didn't know how to do it. And then also recently, in 2019, MTC came in again and also did another class, and they talked about unitary combinations.

I'm confused whether you're talking about then or now, but now, we actually have auditors meetings every month, and we discuss these, and we

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

have a ton of information in our toolbox that we didn't have then.

Q So that's all some newer tools that the Department has?

A Right, but -- of course, and then also we refer them court cases. If we have a court case that talks about a unitary combination, we'll send those to the auditors, and even back then, we would present those.

Q Is there any guidance that is provided to taxpayers regarding the Department's use of either distortion ratios or the qualitative and quantitative analysis that the Department does?

A Well, when I was auditing, when I sent out my initial IDR and letter, if I had looked at the returns and looked at their 10-K, and I thought there was a possibility that an alternative method would be imposed, I always indicated that if we determined that an alternative method may be imposed, you know, this is -- we just -- I basically said there's a possibility that we could impose an alternative method.

And the auditors discuss in their audit exit conference their adjustments, and they describe the unitary combination, and if they have

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

a quantitative and qualitative analysis, they describe that.

And then after -- we always send the taxpayer a preliminary draft, and during that period, they have 30 days -- the taxpayer has 30 days to review everything that we provided and request a conference with the auditor and the supervisor, and after the 30 days are up, if we are able to adjust the audit, we adjust it, and if we can't, we'll send out a final audit assessment which --

(The deposition went off the record due to technical difficulties.)

MS. GEER: Let me see if I can kind of summarize where we were.

BY MS. GEER:

Q So, Orville, I think where we were is I had asked you about any written guidance that the Department provides to taxpayers about the use of distortion ratios or the use of quantitative and qualitative analysis, and you then provided some information about what's given to individual taxpayers during the audit process, but I think you ended up agreeing with me that there's -- other than Revenue Ruling 15-5, there's not really any

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

other written guidance that the Department has issued during this time frame of 2014 through 2019?

A I was just thinking about that, and I think they should be aware of the Media General case, so that would be not necessarily guidance, but written material out there.

Q Yeah, and I'm focused on Department-issued guidance, so --

A Well, it's kind of through the Department. They're the ones that took them to court. I think Media General would be something that the taxpayers should be aware of. It's guidance, but I think it's guidance from the court.

Q And so just to like -- I wasn't just looking for general guidance, I was looking for guidance that relates to the Department's use of quantitative and qualitative analysis or distortion ratios. Is there anything that discusses that to taxpayers?

A Not -- are you talking about a policy document?

Q Yeah.

A Not a policy document that I'm aware of, but as I indicated previously, individually, the taxpayer had -- we discuss it several times with

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

the taxpayers.

Q During the audit process?

A Right.

Q And then the next thing I had asked is about whether the Department had any overarching safeguards or procedures in place to ensure that these determinations being made by the Department are done in a consistent manner across different taxpayers, given that some of the auditors are using distortion ratios, some are not, they're using different types of analysis to get to their decisions. I asked if there was anything in place that was trying to confirm that everything was being done consistently, and I think what you told me was there was nothing at that time. Is that correct?

A Right. I think that as long as the -- I think I said that they have to support their position, and the supervisor has to agree with their position and sign off on the position.

Q And I thought you were saying something to the effect of that you didn't have anything to confirm that there was consistently at that time, but you seemed to be implying that there was something in place subsequently. Did I

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

misunderstand that?

A Yes. We have like a toolbox that has information that we provide to the auditors. I think that's what I was referring to.

Q A toolbox that became available at what point in time?

A It's been like constantly updated. We keep getting more and more information out there, but it was -- I don't remember the first day, but it would have been during this period.

Q So what were you referring to when you said that there were some issues with being consistent during the audit time frame?

A I think I said that it depended on -- I don't think -- I think some auditors did the quantitative and qualitative distortion analysis, and some didn't, but if they didn't do the quantitative and qualitative analysis, they still had to support their position that a unitary combination was a reasonable method, and they have to -- we have the burden of proof. They have to prove that the statutory -- or not the statutory, but the standard method did not fairly reflect their activity in South Carolina, and it's our burden to prove that the method is a reasonable

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

method.

Whether you use distortion -- quantitative distortion -- quantitative and qualitative distortion analysis or if you're able just to do that via a detailed write-up describing the taxpayer's business operations, I think as long as you're able to support your position and your supervisor signs off of it, that's all that was required during the period that you're referring to.

Q All right. So other than that a supervisor is having to sign off of it, is there anything else that's done procedurally to try to make sure that things are applied in a consistent manner? There's more than one supervisor, right?

A Yes. Now we have two foreign supervisors. There's one located in Myrtle Beach, Linda Ward. So I think that she does it the same way that I do, but I don't approve her audits, so I really don't know for sure.

Q And how long have there been two supervisors?

A Let's see. When I became a supervisor, it was -- Rob and I were the supervisors of two different groups, and then he became the foreign

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

audit manager. When he became the foreign audit manager, Linda Ward, in Myrtle Beach, became the other foreign audit supervisor.

So I would say maybe we did it like a year and a half, so from 10/19 to maybe early '21. I don't really remember the exact date that Rob became the manager and she became the foreign audit supervisor. We actually didn't have a foreign audit manager, we reported directly to Don, and then Don wanted somebody in between him, so Rob became the foreign audit manager.

Q And so I don't think I followed exactly. How long -- when was the earliest date when there would have been two supervisors in place?

A It would have been when I became a foreign audit supervisor in October of 2019. Rob was already --

Q So prior -- sorry. Go ahead.

A Rob was the supervisor for the whole foreign group, and when they hired me as the foreign audit supervisor, I became the supervisor of some of the auditors that he previously supervised, and then about a year and a half later, Rob became the foreign audit manager, which we previously didn't have a foreign audit manager, and

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

then Linda Ward, in Myrtle Beach, became the other foreign audit supervisor. She has -- I think she has five foreign audit supervisors -- five foreign auditors, and I have six foreign auditors.

Q And so in '14 through '16, there would have been only one audit supervisor?

A Yes.

Q And would that have been Dana Taylor?

A Yes, but I can't remember -- at some point we had a -- Earl Toole was our supervisor, but I can't remember the dates. I'm assuming that Dana was the supervisor between 2014 and '16, but I'm not certain of that, because I know that she became the -- she was the -- I'm not sure if she was a foreign audit supervisor before or after Earl Toole. I'm getting confused. But it could have been Earl Toole, but I think it was Dana. You could probably look at whoever signed off on the proposed assessment.

Q Yeah. All right, Orville. Do you have the Revenue Ruling 15-5 handy?

A Yes.

Q Okay. Hold on. I need to get it handy myself. If you'll go to Page 4 for me.

A Okay.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q Under Subsection C.
A Okay.
Q So this is talking about when the Department selects an alternative apportionment method, and it says, "One of the few courts to address when an alternative apportionment method will be considered reasonable is the Oregon Supreme Court in the Twentieth Century-Fox Film Corp. case."
A Right.
Q Is that test which follows that sets out the test used in that case, is that what the Department uses when it's making this analysis?
A Yes, except for Number 2. We're not a UDITPA state, so we don't include that in our analysis.
Q So Steps 1 and 3 are what the Department uses?
A Right.
Q So let's go to Step 1, "The division of income fairly represents business activity and if applied uniformly would result in taxation of no more or no less than 100 percent of taxpayer's income." Tell me how the Department applies this factor when you're dealing with a unitary business.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A It's just how you read it. You look -- if Texas -- I mean if this taxpayer you're referring to, Tractor Supply, had filed unitary combination in every state, they wouldn't report more than 100 percent, just the way the unitary combination works in any other state.

So just the fact that we did a unitary combination, if they did it in every state, there would be no way that they would report more than 100 percent of their activity because the apportionment ratio would be only the sales in the numerator for that particular state, so mathematically, it would work out to be 100 percent.

Q And when you're looking at whether it's taxing more than -- no more than or no less than 100 percent of the taxpayer's income, are you looking at Tractor Supply Company, or are you looking at the unitary group?

A The unitary group, because if they filed a unitary return in every state and used the unitary combined apportionment, and the sales was the correct ratio, they wouldn't -- they used the sales ratio, they would not pay more than 100 percent -- more than -- not more than

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

100 percent of their combined apportionable income would be sourced to the 150 states.

Q So in that one, you're looking at the unitary business income, because if you applied combined unitary reporting, it would tax more than 100 percent of Tractor Supply Company's income if combined unitary reporting was uniformly applied, right?

A Could you repeat the question?

Q Yes. I think what you told me was that when you're looking at if it's going to result in taxation of more or less -- no more and no less than 100 percent of the taxpayer's income, you're looking at the unitary business's income --

A Right.

Q -- if you were to look at whether it's taxing no more and no less than 100 percent of Tractor Supply Company, not the unitary group, but Tractor Supply's income.

A No. I'm talking about the unitary group.

Q And you would agree that for the taxpayers, if you didn't look at the unitary group and you did look at the taxpayer TSC's income, it would tax more than 100 percent of the taxpayer's income?

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A No. I don't agree or disagree. I don't know enough about it to say yes or no on that.

Q Well, you know that Tractor Supply Company's income is a lot less than the group's income, right?

A Yes, I know that there's -- maybe I didn't understand your question. You're saying that -- are you asking me if Tractor Supply's income is more than somebody -- I'm not -- can you repeat the question? Because I don't understand your question at all.

Q Let me just move on. I might be able to cover it in a different way that's very clear.

Let me ask you about Step 3, "The division of income reflects the economic reality of the business activity engaged in by the taxpayer." Tell me what that means to the Department.

A Well, it basically means how does this company earn their income. Do they earn their income from some intercompany transactions, or do they earn their income from selling at retail to third parties? And if they're selling their -- if they're selling goods to third parties, then that's how you determine your income. If all that income's been shifted to another state or another

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

entity, then that's not the economic reality of the entity that files in South Carolina.

Q And other than those two factors, is there anything else that the Department looks at to decide whether the alternative apportionment method that it's considering is reasonable and/or equitable?

A None that I'm aware of.

Q And similar to the question I was asking you when we were talking about the first step of determining whether the standard method reasonably reflects the taxpayer's business activity in the state, when you're making this other determination of whether the alternative method is reasonable or equitable, what procedures are in place to ensure that those determinations are made in a consistent way across different taxpayers? Is it also that you have supervisors that are paying attention to that, like you said with the other issue?

A Right. And if they're using a unitary combination, then -- and it's based on the sales ratio and not any other states, based on the mathematical computation, there's no way that they can report more than 100 percent of their income to more than -- I mean more than -- it's just not --

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

there's just no way.

Q All right. I'm going to move to Topic 13. All right. I'm going to ask you some questions about how the Department applies the alternative apportionment statute in situations where the Department concludes that a unitary business exists and multiple members of that unitary business file in South Carolina already? All right. So that's kind of the ground facts.

So let me give you like a better -- like a more concrete example. Let's say we have two entities, A and B, and they constitute a unitary business. Both operate in multiple states, including South Carolina, and both are filing separate South Carolina corporate income tax returns each year and apportioning their income to South Carolina.

All right. In that situation, if the Department wants to require one of those -- wants to require A and B to file a combined unitary return, does the Department need to independently prove that the standard method fails for A and for B, or can it just prove it as to one entity?

A Well, if you're imposing a unitary combination, you're looking at the group as a

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

whole, so if one -- it just depends on the group as a whole. If one entity's distorted and the other one's not, but one is so distorted that you feel that the only way you can cure the distortion is through unitary combination, then you would only show distortion for that one entity, you wouldn't have to show distortion for the other entity. But if both were, of course, you would show distortion for both entities.

Q So you might have a situation where you do the analysis and you think both, but if you did the analysis and only one was distorted, you still could impose combined unitary on both of them?

A On the whole group. You wouldn't be imposing it on those two entities, you would impose unitary combination on the whole group and then only tax the business activity of those entities that operate in South Carolina.

Q In my example, there's just A and B, there's not any other affiliates. So if you have just A and B as the members of the full unitary group, and both of them file in South Carolina, and only one of them does -- I'm asking whether you need to show that both --

A That's kind of -- well, it depends on --

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

like if one company is -- the only -- one company, that's kind of hard to say, because you've got two entities. One company is reporting all the income, so the only distortion is creating between one of the two companies. So one of the companies -- it depends on what they source.

And we actually do see that where like one company will be filing in South Carolina, and they will reflect all the income, and the second entity also files in South Carolina, but they -- their apportionment factor is very small or almost zero, so you just have to -- in that case, the distortion would be created through the two entities.

If you have two, obviously, one entity is paying the other entity, so the distortion is for both of those two entities. That's the only way you could assert a unitary combined return. You would have distortion on both of those entities. One entity would be reporting too much of the income, and the other entity would be reporting too much of the income, so both entities would be distorted if you're talking about only two entities. We don't see just two entities. That's rare.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q And so in your more common example, you're going to have multiple entities?

A Yes.

Q Let's say you have five or six entities, but if two are filing in South Carolina, do you have to show that both of them have --

A No, no, of course not.

Q And is your authority for that position that you don't need to show it for both?

A Well, you're looking at the business activity of the South Carolina entities, and does the standard method fairly reflect their activity, and if one entity is -- has all of the third-party sales, and they're reporting zero, no income, and the other entity reporting in South Carolina, maybe they hold the payroll, and they just charge the amount of the -- they lease the employees to the other entities and they charge a very small markup, then that particular entity is not distorted, but the group as a whole is distorted, and therefore, the South -- the income -- the net income for the entities filing in South Carolina is distortive.

Q All right. I'm switching over to Topic 19. When the Department used the combined unitary reporting method in this matter, it

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

apportioned the combined income of the group to South Carolina using the sales factor. We talked about that earlier, correct?

A Correct.

Q And the numerator would have been sales in South Carolina, and the denominator would have been sales everywhere, right?

A Correct.

Q And the denominator would have included the sales made by TSC by the Texas retail stores, right?

A No. Those are intercompany sales -- any -- are you talking about the third-party sales, or are you talking about intercompany sales?

Q I'm talking about sales made by TSC of Texas retail stores.

A Okay. Well, does that include sales to third parties, and does it also --

Q Yes.

A -- include intercompany sales?

Q No, just sales of the Texas retail stores.

A Right. Okay. Because I thought Texas was the one that actually sold the inventory, but you're not talking --

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q They do, but I'm not asking about that for this question.

A Okay. That's what was confusing to me. Okay.

Q Yeah. I'm sorry. I probably said it in a weird way, so I'll just start back over. The denominator would have included sales made by the TSC of Texas retail stores?

A Yes.

Q And you may have been anticipating my next question. Did the Department consider adding the procurement sales from TSC of Texas to TSC and to Michigan into the denominator of the sales factor?

A No, because that violates the whole unitary combined apportionment principle. That's the purpose of the unitary combined apportionment. You eliminate in the -- on the apportionable -- combined apportionable income, you eliminate all intercompany sales or receipts, and in the South Carolina numerator and in the everywhere denominator, you eliminate all intercompany sales or gross receipts. That violates the whole -- that's the whole purpose of the unitary combined apportionment, to eliminate those intercompany

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

transactions in the base and in the numerator and denominator.

Q I thought you might say that, but I just had to ask.

A Okay.

Q Let's see. So the sales factor is the sales in South Carolina over the sales everywhere?

A Correct.

Q Would you agree that the intent with that is that it represent the business activity in South Carolina over the business activity everywhere?

A Yes.

Q And so I'm going to push you a little bit further, just to make sure I can't get you to agree with me on any of this.

Would you agree that the procurement functions that are provided by TSC of Texas are important to the success of both Tractor Supply Company and Tractor Supply Company of Michigan?

A Yes.

Q And would you agree that the collective TSC group has multiple lines of business, such as the retail and the procurement?

A No.

Q Would you agree that the group as a whole

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

is not just a brick and mortar retailer?

A I don't know what -- I don't know enough about the company, but I don't know if they have online sales or not. Most companies now do. They probably do have some online sales. But, I mean, I look at the 10-K because it usually describes what they do, and I've looked there, but I think they're just a retailer.

Q Well, you don't disagree that people are performing those procurement functions, right?

A Yes, just like people are located at the stores and performing the function of acting as a sales clerk, or whatever you want to call it, or somebody located in a distribution center loading inventory to be delivered to the stores. They're all -- every -- all the employees of all the groups are important to the operations of the taxpayer. And in fact, I think the employee salaries are a driver of the income for not only the entities that file in South Carolina, but the whole unitary group.

Q Well, why do you think it wouldn't be reasonable to include those procurement sales in the denominator in addition to the retail sales if you're trying to represent all of the business

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

activities of the taxpayer?

A Because all the business activity of the taxpayers are encompassed in the tangible personal property they sell to third parties. I'm assuming that that's what they indicate in their 10-K. I don't know whether they indicate that they make money on procurement fees that they charge affiliates, but they probably don't, because the 10-K is net of any intercompany receipts, so they're not in the -- that's part of their function, to generate sales, but it doesn't generate any income, other than the intercompany transactions. And that's not really income, because it's eliminated in the 10-K that report to investors and also in the federal consolidated return that they file with Internal Revenue Service.

Q Did the Department perform any analysis to see how much income would be apportioned to South Carolina if the procurement sales were included in the denominator?

A That would be ridiculous for us to do, because as I indicated before, that violates the whole concept of alternative apportionment using the unitary combined apportionment.

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q All right, Orville. I want to ask you about the matching principle. This is Topic 20. I'm not sure I follow this whole argument, but can you just tell me what factual support the Department has that the matching principle has been violated?

A The way I understand is I think the DD, the Department determination, indicated why the matching principle was violated because --

Q I just didn't understand it, but I'm obviously -- sometimes I'm slow on the uptake on things. I just didn't understand it.

A The way I understand it, the matching principle is an accounting concept that we've adopted through case law or court cases in South Carolina. So, basically, what it means is, for example, Tractor Supply is taking all the expenses for income that is generated by Texas, which is not filing in South Carolina, and -- by Texas not filing in South Carolina, the matching principle is violated because the expenses that are generated -- I mean the income that is generated by the expenses taken by the South Carolina entity is not matched to the income that it's reporting by taxes which it's not filing in South Carolina, and so the

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

unitary combination accounts for that by basically eliminating those transactions.

Q I was trying to write down while you were talking, and I didn't write fast enough, so I did not capture everything you were saying. Can you just -- like which income are you talking about, and which expense are you talking about?

A Well, for Tractor Supply, I'm assuming it would be the markup that's included in cost of goods sold and the markup that's a deduction or expense. It's included in cost of goods sold, which, as you know, reduces the third-party sales. So that income that's an expense or deduction for that markup is included in the income of Texas, which is not reported to South Carolina. That markup helps generate the income that Texas produces and Texas not filing in South Carolina, so that's what -- that's what the matching adjustment is.

Q So you're talking about Tractor -- so Tractor Supply of Texas receives income from the procurement payment.

A Right. I think the --

Q And you're saying that --

A The markup was -- the markup is --

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

Q I'm sorry. Go ahead.
A You told us not to talk over each other. Go ahead. I'm sorry.
Q I know. I did it too. I'll be quiet and let you talk.
A The markup was -- I think it was nine point something percent, so the South Carolina entity, Tractor Supply, which I think is a South Carolina entity, is taking a deduction or an expense because it's included in the cost of goods sold for the markup.
Q Right.
A And so the --
Q Which how I viewed it is that TSC is deducting that expense that it incurs in order to generate income in its stores which it reports as income in South Carolina.
A I think they're referring to the markup that Texas receives on the intercompany transactions, not on the retail --
Q So it's not on the TSC side, it's on the TSC of Texas side that there's a mismatch?
A Right. So when you say -- when you use initials, I have no idea what you're talking about, because I'm not that familiar with this, but I

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

think -- is it called Tractor Supply is the entity filing in South Carolina?

Q Yes.

A So they have a -- I call it a deduction which is included in cost of goods sold for the amount of the markup that is paid to Texas.

Q Right.

A So the matching principle is violated because the income that -- the expenses that Tractor Supply takes is not matched to the income that is generated via the intercompany transactions which is reported by Texas, so the matching adjustment is violated.

Q I at least follow what you're saying, which is further along than I was when I started, so thank you for clearing that up for me.

All right. So what I need to do now -- I've covered all the topics, Orville, but I need to go back through my notes real quick and just make sure I didn't miss anything, so if y'all don't mind us taking a short break, and hopefully, it'll be around ten minutes, but I definitely don't have much more. I may have a little more.

A All right.

(A recess transpired.)

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

MS. GEER: I don't have any further questions, so only if Nikki has some.

MS. WOOTEN: I don't have any questions for Orville.

MS. GEER: Do y'all want to read and sign?

MS. WOOTEN: Yes, please.

(The deposition was concluded at 3:03 p.m.)

- - -

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

SIGNATURE OF DEPONENT

I, the undersigned, ROBERT A. KING, JR., do hereby certify that I have read the foregoing deposition transcript and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____

_____ _____

ROBERT A. KING, JR. DATE

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

SIGNATURE OF DEPONENT

I, the undersigned, ORVILLE SHARPE, do hereby certify that I have read the foregoing deposition transcript and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____
____	____	_____

_____ _____

ORVILLE SHARPE DATE

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

I, Marie H. Bruegger, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____ Date _____

Marie H. Bruegger, RPR, CRR
Notary Public in and for the County of Charleston, State of South Carolina

My commission expires March 23, 2031

Electronically signed by Marie Bruegger (401-229-621-9523) dc8264a6-aa5e-4957-ad85-5e9dd75b1ce2

A
A(1) 133:16
A(4) 128:10 129:12,24 131:25 132:18 133:19 134:22
a.m 1:13
ability 172:10
able 5:12 16:5 31:25 32:10 36:24 37:10 39:13 43:12 57:8 96:19 142:8 144:9 148:4,7 154:12
absolutely 61:21 73:22
acceptable 38:22 61:9
access 45:24 126:10
accessible 62:2
accounting 123:25 165:14
accounts 166:1
accurate 35:3,4 61:17 71:4,6 103:11 170:6 171:5
acknowledge 39:19
acting 163:12
action 172:13,17
active 124:6
activities 12:25 22:15 48:4 53:8 57:3 66:17 70:22 85:5 86:6,12 86:15,21 87:8 87:11,16 101:22,22 102:7,8,11,12 102:12 107:14 114:11 115:1 116:1 137:15 164:1
activity 21:17,23 22:2 23:12 26:17 48:25 49:24 65:19 70:2 75:4 77:3 79:22 85:10,12 85:17,22 88:6 89:2 96:2 101:7,11,14,17 101:20 103:9 103:16,20 104:15 105:7 106:5 111:21 115:16,18,21 116:7 128:6,8 130:8,12,18,22 131:7,12,15,19 131:20,25 132:6,10,12 133:14 136:5 137:20 138:4 140:5 147:24 151:21 152:10 154:16 155:12 157:17 159:11 159:12 162:10 162:11 164:2
actual 17:5 38:2 107:11 120:11
ad 46:22
add 36:16 134:14
adding 134:17 161:11
addition 163:24
additional 9:12 28:10 35:1 36:12,16 91:8 133:20 134:17 142:6
address 36:9 37:14 84:19 151:6
addresses 76:6
addressing 31:19 126:24
adds 142:6
adequately 139:3
adjust 144:9,9
adjusting 26:21 26:25 73:4
adjustment 27:10 59:12 72:20 73:1 166:18 168:13
adjustments 3:21 61:20,21 72:11 93:11,13 143:24
administrative 1:1 4:13 82:13 119:14
adopted 165:15
advice 17:17 18:6
advises 100:10
affect 31:3
affiliate 43:10,13 43:20 54:12,20 55:11,14 57:6 102:4 104:2
affiliates 42:12 53:15,23 54:10 56:4 57:12,14 157:20 164:8
ago 8:21 124:1
agree 21:14 22:20 37:18 59:16,17 60:15 92:17 102:7 103:5 104:16 104:18 130:24 135:17,20 146:19 153:21 154:1 162:9,14 162:16,21,25
agreed 74:19
agreeing 144:24
agreement 63:19 65:22 82:12,13 82:14,15 108:8 109:13 130:14 140:2,11
agreements 80:20,24,25 81:6,23 82:6 82:12,17 84:3 84:4,25 117:20 132:15 140:10 140:11
agrees 42:15 75:9 139:5
ahead 7:12 15:22 121:23 149:18 167:1,3
allocation 128:4 128:11 130:2,3 131:10 132:20 133:22
allow 36:14
allows 100:2
alternative 5:19 21:15 22:4,7 22:17,22 23:7 23:10 24:23,25 28:18 29:2 30:12 32:12,25 35:2,10,15 38:23 39:13 40:20 51:22 52:12 58:3 60:5 68:13 88:20,25 90:4 90:19 92:11 95:7 112:12 122:23 125:20 125:22,24,25 129:15,21,25 133:12,17 134:9 140:6,7 143:17,19,22 151:4,6 155:5 155:14 156:5 164:24
ambiguity 117:7
amount 51:4,15 52:4 59:18 98:20 107:11 107:12 108:17 126:4 159:17 168:6
amounts 50:7 107:19
analyses 139:11
analysis 22:3 25:17 34:1 43:23 49:16,23 62:19,21 63:25 69:12,17,20,25 71:13,18 73:12 80:8 97:20 100:14 105:11 111:12 114:15 136:23 137:13 137:25 138:10 138:18 139:5,9 139:10,23,25 140:17 143:13 144:1,21 145:17 146:11 147:16,18 148:4 151:13 151:16 157:11 157:12 164:18
analyze 80:13
analyzed 81:18 114:10
analyzes 106:4
analyzing 48:24
and/or 155:6
Annotated 20:14
answer 7:6,11 7:12 20:2,9 27:5 31:18 32:8 48:11 56:16 61:22 64:10 95:20

97:3 105:3 109:2 112:20 121:3,22,23 123:8,8 130:15 134:16 137:7
answer's 85:20
answered 34:22 38:7 112:21
answering 6:8
answers 65:10
anticipate 31:8
anticipated 30:21 31:7,16 32:3
anticipating 70:6 161:10
anymore 125:7
anyway 70:11 95:18
APA 29:10
apologize 24:2 46:14,15 48:12 70:8 75:20 78:5 80:22 81:2 100:20
appeals 118:13
appear 68:11
Appearance 1:15
APPEARANC... 2:1
appears 172:7
applicability 29:7 36:6
application 20:13 41:18
applied 56:17 66:2 148:14 151:22 153:4,7
applies 133:16 151:24 156:4
apply 36:13 49:1 52:15 57:18,21 60:7 67:23,24 68:1 75:14 84:2
applying 62:21 66:3 122:24
apportionable 153:1 161:18 161:19
apportioned 105:17 135:3 160:1 164:19
apportioning 92:11,19 131:2 131:3,5 156:16
apportionment 5:19 21:16,22 22:4,8 23:7,10 24:24,25 26:22 27:1,10 35:2 35:11,16 38:23 39:14 40:17,21 51:23 52:13 58:4 60:5 68:13 70:1 87:25 88:25 90:19 106:21 112:12 116:16 122:23 125:20 125:22 128:4 128:12 129:15 129:25 130:3,4 130:6 131:10 132:20 133:12 133:18,22 134:10 135:4 135:19,24 140:7,8 151:4 151:6 152:11 152:22 155:5 156:5 158:11 161:16,17,25 164:24,25
apportionments 125:24
appreciate 32:18 32:22 70:12 83:15 119:11
approach 99:21 135:21
appropriate 58:4 65:13 69:7 72:21
approve 141:22 148:19
approved 68:12
Approximately 105:17
April 10:23
arguing 83:16 102:10
argument 62:15 165:3
arguments 77:5
arm 43:12
arm's 51:5 59:10 59:25 71:1,11 95:24
arrangement 65:17 67:12
arrive 104:4
arrived 33:13 87:13
asked 7:10 18:19 44:22 51:19 76:3 81:5 84:1 88:14 100:16 101:6 104:18 113:3,21 114:9 114:24 115:17 116:14,18 144:18 146:4 146:12
asking 5:23 19:24 39:1,7 66:10 80:21 81:1 100:7 102:2 105:14 113:16,17 123:7 129:5 154:8 155:9 157:23 161:1
aspects 79:7
assert 158:18
asserting 84:23
assess 27:20
assessed 118:12
assessment 93:22,24 98:15 144:10 150:19
Assessments 3:20 93:11,13
assets 139:17
assignment 16:11
assist 12:23 136:13
assisted 14:12,12 18:15,19
assisting 14:15 14:17 15:3
associated 53:8 57:3 98:5
assume 4:16 18:24 20:8 21:20 25:25 27:22 28:20 31:12,15 35:14 45:24 51:9,20 57:25 60:1,4 61:1 67:9,12 85:20 96:18 97:3 128:18
assuming 150:11 164:4 166:8
attachments 82:11
attack 73:3,5,7,8
attention 155:18
attorney 7:9 121:19 172:15
audit 3:20 9:23 10:7,12,15,15 10:16,18,19,21 11:6,13,14,19 11:23 12:3,7,7 12:10,10,15 13:6,7,18 14:4 14:6,8,10,11 14:24 15:3,4,9 15:11,15,23 16:10,17,24 17:4 19:20 20:22,25 29:5 33:12 38:16,24 39:14 41:10 42:1 45:19,20 46:9 57:10 80:1 81:16 93:10,12,18,24 94:4,7 95:23 96:10,10,10,14 96:16,20 97:3 97:10,17,19 98:4,24 118:4 118:11,14 124:24 125:2,8 125:13 135:9 135:10,11 136:25 137:18 141:5,7,9,18 141:22 143:23 144:9,10,23 146:2 147:13 149:1,1,3,7,9 149:11,16,21 149:24,25 150:2,3,6,15
auditing 46:21 130:9 143:14
auditor 10:1 14:12 15:2 63:10,23 64:2 124:14,20,22 126:2 136:15 137:12,17 138:13 144:7
auditors 12:12 12:17,21 13:2 13:10,19 14:20 16:12 37:3,6 41:15 45:16,24 47:1 125:1

136:12,18,22 137:23 138:9 142:8,13,24 143:8,23 146:9 147:3,15 149:22 150:4,4
audits 10:12,19 12:24 14:16,18 14:20 57:15 72:5 96:5,7 125:4,9,15,19 136:14,15,17 136:25 138:17 141:2 142:11 148:19
August 10:14,17 11:11,21 12:1 14:19
authority 25:20 26:15 27:18,23 27:25 28:21,25 33:17 34:11 35:1 113:3,7 113:11,17 159:8
authorized 28:17
authorizing 27:19
Auto 20:18 123:9
automatic 49:5
automatically 49:16
available 55:25 147:5
avoid 16:1,5
aware 24:11 34:20 72:14 84:21,23 86:3 86:5,11 94:3,6 94:12,20 96:9 145:4,12,23 155:8

B

B 42:13 156:12 156:20,23 157:19,21
BA 123:24
back 8:25 10:3,9 10:23 11:5,8 13:23 14:3 16:22 18:7,10 19:13,15 36:12 36:15,17,24 38:10 48:14,21 57:25 62:15 68:9,10 82:8 98:8 99:17 107:10 117:8 118:4 123:19 125:5 143:8 161:6 168:19
backed 89:20,21
background 8:3 8:4,7 9:6 15:24 16:7 116:23 120:9,10 123:22
bank 124:15
banks 40:16,16 41:5
base 162:1
based 63:8,22 119:15 129:15 135:15 155:21 155:22
basically 13:22 98:9 99:6 100:18 103:15 108:6 109:22 127:23 133:8 143:21 154:18 165:16 166:1
basis 38:14 39:3 46:23 84:10 92:1 97:2 132:24
Beach 148:17 149:2 150:1
BEGAN 1:13
beginning 9:6,15 112:10 117:18 120:8 128:3
begins 115:11
behalf 6:10 8:5 120:4
believe 12:18 28:6,9 39:12 39:21 52:17 54:6 57:10,15 63:17 64:25 87:2 97:6 113:4 122:25 126:13
believes 73:5 74:13 79:14 95:2,6
belong 105:2
benefit 39:20
best 67:2 172:10
better 38:20 52:7 109:2 156:10
beyond 19:1 28:11 46:13 66:13 91:13 132:23
big 53:1
bigger 110:6
biggest 66:17
bit 5:16 6:22 16:15 17:3,23 66:13 68:5,22 70:7,17 79:5 84:18 91:20 109:2,3 120:9 162:13
book 21:11 126:19
bottom 48:22 68:4 99:20 133:3
Boulevard 2:9
break 7:18,21 40:10 47:7 73:25 74:2 76:15,19 84:15 85:7 121:25 168:21
breaks 7:16 121:25
breath 6:24
brick 163:1
bright 53:18 60:25 61:1 106:1 108:15 111:2
bring 30:8 45:11 54:24
bringing 54:11 55:11,16,24
Bruegger 1:16 172:5,21
Bryson 2:3 4:8 48:15 73:19 98:23 116:10 119:8 127:11 127:12 128:21
bryson.geer@... 2:6
bucket 132:11
budgetary 72:2
build 66:4
building 66:9
burden 134:11 147:21,25
business 21:17 21:23 22:2,15 23:12 26:2,7 26:11,17 30:17 41:13,14,25 42:7,8,20 43:14 44:20 45:6,9 48:4,25 49:2,5,15,19 49:21,24 50:3 50:7,8 53:8,12 54:7,23 56:25 57:3 58:6,22 59:3 65:19,23 66:17,23 67:5 70:2,21 75:4,7 75:17 76:5 77:3 78:12,22 79:16,22 80:5 80:15 83:24 84:2,5 85:1,5 85:10,12,17,22 86:5,11,15,20 87:8 88:1,6 89:2 90:24 91:4,12,13 92:8,15 96:2 101:7,11,14,16 101:18,20,20 101:23,25 102:1 103:9,16 104:15 105:7 114:10 115:1 115:16,18,20 115:22 116:1,7 116:8 128:1,2 128:6,13 129:12,13,17 129:18,19 130:1,8,12,18 130:21 131:7 131:12,15,20 131:24 132:10 133:14 136:5 138:4 148:6 151:21,25 153:4 154:16 155:12 156:7,8 156:13 157:17 159:10 162:10 162:11,22 163:25 164:2
business's 87:15 93:2 128:8,14 130:6 131:3,6 132:2,22 153:14

businesses 49:10

C

C 47:22 79:5 122:12 151:1
cable 73:20
Calculating 99:22
calculations 140:18
call 83:6 103:4 118:13 119:8,9 163:13 168:4
called 168:1
calling 82:9
capacity 6:10 8:5 10:3,7,8 11:8 15:1 16:25
capital 57:2 108:4
capture 166:5
care 37:13
Carmax 20:18 26:20,21 27:2 134:8,12
Carolina 1:1,5,9 2:8 4:12 20:13 20:15,20,21 21:7 26:14,17 29:16 30:5 48:5 49:1 54:14,20 59:12 70:3,22 76:5 77:3 78:18 79:16,22 83:13 85:18,23 86:1 86:7,13,18,22 87:4,16,18,23 88:1,8,10,19 92:21 93:1 96:2 103:24 104:1,1,16 105:18,21 107:14 115:21 116:2 119:13 123:24 127:25 130:12,18,22 131:7,15,21,22 132:2,7,8,10 132:14,16 133:14 136:5 137:20,22 138:4,6,6 139:18,21,22 140:5 147:24 155:2 156:8,14 156:15,17 157:18,22 158:8,10 159:5 159:11,15,22 160:2,6 161:21 162:7,11 163:20 164:20 165:16,19,20 165:23,25 166:15,17 167:7,9,17 168:2 172:3,23
Carolina's 130:5 131:24
case 1:4 9:3 20:18 21:9 23:23 25:4,24 26:20,24 27:3 28:21 31:1 32:5 36:23 40:15 44:2,9 52:16 54:25 55:6 57:15,18 58:15,16,19,20 60:9,12 62:14 64:12 66:25 72:24 73:6 83:16 89:6,10 95:3 103:23 108:4 109:7,21 122:18 123:6 123:11 132:25 134:13 135:2 135:17 139:2 140:14 143:6 145:5 151:9,12 158:12 165:15
cases 8:17,24 26:22 27:9 38:13,23 39:2 39:14 42:21 44:22,23 46:22 57:16,20 70:24 73:12 122:22 123:1,2,14,15 123:15 125:21 141:16 143:6 165:15
cash 51:9,21
cause 127:1
caused 104:14
causes 107:6
causing 98:9 107:7
caveat 133:3
center 2:4 163:14
Century-Fox 151:8
certain 12:16 14:16 52:4 136:25 150:13
Certificate 3:9 172:1
certifications 9:13
certify 170:4 171:4 172:7
cetera 40:4
chance 34:19 103:1
change 44:1,3 98:20 170:9 171:9
changes 44:7,8 104:20
chapter 128:5 131:11
characterized 112:11
charge 72:17 104:11 108:2 159:16,18 164:7
charged 65:4 71:11
charges 109:9
Charleston 2:5 18:16 172:4,23
check 50:13 75:21
checklists 46:8
choose 23:1 130:19
chopped 128:23
chosen 72:21,23 73:9 125:25
circumstances 23:24 36:10 64:13 111:14 111:16 139:2
citation 20:17
cited 113:5,5,18
Civil 4:12
claim 97:2
claimed 96:14
clarification 34:24
clarified 79:18
clarifying 32:22
class 142:17,21
cleaner 70:13
clear 5:5 7:14 8:6 23:19 69:24 100:7 134:6,16 154:13
clearing 168:16
Clemson 9:9
clerk 163:13
click 126:12
client 4:15 119:16
Coast 20:19
Code 3:14 20:14 21:2,7 88:19 113:8
collective 162:21
college 9:7
Columbia 2:9
combination 97:25 122:24 125:21 130:9 130:19,20 131:18 133:12 137:21 140:6 142:1,5 143:7 143:25 147:20 152:4,6,8 155:21 156:25 157:5,16 166:1
combinations 125:23 142:18 142:22
combined 25:20 26:15 27:19 28:17 29:1,16 30:5,11,25 32:12 33:1,11 35:11 40:5,8 41:7 49:6,17 68:12 69:7 72:25 73:8 88:21 89:11,13 89:17,19 90:3 90:7,18 91:3 91:15 92:18 95:6 99:22 100:3,6 105:19 105:23 109:24 125:20 126:1 129:16 130:23 131:1 132:4,5 133:9 135:22 136:16 152:22 153:1,5,7 156:20 157:13 158:18 159:24

160:1 161:16 161:17,19,24 164:25
come 12:19 14:2 15:7 32:19 48:8 62:12
comes 107:10
comfortable 6:4 6:8 120:4
coming 31:21 33:13 68:23 119:12
comment 32:18
commerce 11:3
commission 172:25
common 159:1
Communicati... 3:15 20:15 25:12
companies 56:8 59:5 68:15,15 68:16,21,21 158:5,5 163:4
company 1:2 4:15 14:5 44:5 44:5,7 55:1,4 56:22 60:10 65:9 69:16,16 69:18,19 85:22 86:6,12 87:22 88:9 92:20 95:22 104:11 104:21,23 107:8 114:17 114:19,21 115:19 116:2,4 117:15 152:18 153:18 154:19 158:1,1,3,8 162:19,19 163:3
Company's 116:1 153:6 154:4
compared 55:10
comparing 54:3 54:4 110:11
comparison 54:1
complete 12:24 68:1,3
completed 18:3
complex 84:14
components 42:20
comprised 139:11
computation 155:23
computer 19:6 73:20
concept 164:24 165:14
concerned 51:1
concerning 8:22
concluded 26:14 169:8
concludes 156:6
conclusion 16:19 84:12,22 97:20
conclusions 17:3 87:13 109:16
concrete 69:14 156:11
conference 118:13 143:24 144:7
confirm 146:13 146:23
confirmed 17:2
confirming 28:13,15,16
confused 11:22 142:23 150:16
confusing 38:19 161:3
conjunction 62:9
connection 100:11
cons 34:2
consider 33:14 33:23 37:1,4 68:2 89:11,23 161:11
consideration 61:25 88:20
considered 32:17 48:2,2 71:23 72:2 101:20 151:7
considering 65:18 155:6
considers 71:12
consistent 23:15 23:20,21 25:23 46:19 47:1 86:19 89:13,15 89:24 146:8 147:13 148:14 155:16
consistently 146:14,23
consolidated 164:15
constantly 147:7
constitute 156:12
contact 13:19
contain 94:23 95:1,5
continue 114:2 129:16
continuing 18:11
contract 67:10
contrary 74:13
control 65:19,23 65:24 66:17 67:7,11,13,16
conversation 112:13
converse 59:15
convey 68:18
copied 48:9
copies 19:6
Corp 113:14 151:8
corporate 27:20 124:22 156:15
corporations 100:2
correct 5:4 6:13 12:4 13:15,21 13:24 15:5,5 18:2,2,8,23,23 19:3,3,7 21:24 22:6,8,9,12 23:3,8 25:2 26:3,8 27:7,12 28:7,14,16,20 29:2,3 30:2 31:25 33:24 35:4,17 39:18 39:23 45:20 47:3 49:3,8,18 49:20 50:1 52:8,23,23 54:5 55:17 56:10,14 57:19 61:3 63:1,21 69:9,22,22 70:4 71:7,15 71:19 72:12 73:10 75:18 78:23 79:2,23 82:25 83:19,25 84:7,10 87:19 88:12 89:3,18 89:18,24 90:12 91:7 92:14,22 93:3,8 94:1 96:7 98:18 102:16,16 110:13,16 111:6 131:4 134:22 135:25 140:24 146:16 152:23 160:3,4 160:8 162:8
correcting 72:20
corrections 170:7 171:7
correctly 53:21 71:10 95:24 109:23 121:15 131:8 138:8
cost 65:4 166:9 166:11 167:10 168:5
counsel 172:12 172:15
country 125:6
County 172:4,22
couple 102:25 103:3 116:17 120:7
course 16:22 121:19 126:17 140:9 143:5 157:8 159:7
court 1:1 4:13 7:8 25:24 31:1 36:22 72:24 73:6 119:14 121:3,9 140:14 143:6,6 145:11 145:13 151:8 165:15
courts 26:14 42:18 118:7 151:5
cover 6:5 120:2 154:13
covered 27:16 37:19 45:1 47:5 74:22 95:10,13,14 119:19 126:25 168:18
covering 5:1,3,7 5:8,14 6:4 47:13 73:16,18 74:20 91:21 119:20 120:1

covers 7:23 38:24
COVID 125:6
CPA 123:25 124:2,4
crazy 7:4 47:16 64:18
created 11:3 158:13
creating 158:4
credits 11:2,3
cross-reference 5:12
CRR 1:16 172:21
cure 157:4
curious 106:2
current 81:16 94:23 96:10
currently 43:19 124:25
customers 115:24
cut 98:25 137:10
cutting 50:13

D

D 3:1
Dana 15:14 150:8,12,17
data 111:17
date 1:12 19:22 20:23 27:17 29:6,12 40:2 72:6 149:6,13 170:25 171:25 172:20
dates 150:11
day 59:13 147:9
day-to-day 12:25
days 36:3 142:18 144:5,6,8
DD 112:15 113:25 114:3 165:7
deal 5:18 27:14 53:1 58:10 107:23
dealing 27:9 90:15 151:25
deals 70:15 90:17 96:5 136:2
dealt 9:1
decide 24:23 54:16 66:19 67:15 89:6 111:15 130:25 138:13 155:5
decided 89:6 129:25 142:15
decides 24:25
deciding 35:10
decision 17:1 29:8 37:11 47:24 61:18 88:18 105:6 117:4
decisions 46:18 47:2 146:12
deducting 167:15
deduction 166:10,13 167:9 168:4
Defendant 1:7 2:7
defer 74:21
deferring 47:14
define 133:6
defined 75:12
defines 114:17
definite 53:18
definitely 168:22
definition 32:8
degree 9:8
delineation 14:14
delivered 163:15
delve 64:20
denominator 160:6,9 161:7 161:13,22 162:2 163:24 164:21
department 1:5 1:9 2:8 3:18 4:16 6:7,10 8:6 9:18,23 11:4 19:22 20:16,20 20:21 21:21 22:16,22 23:5 23:6,9,13 24:15,22,25 26:9 27:19 28:1,10 29:11 30:11,15,20 31:2,7,23 32:3 32:23 33:6,8 33:14 34:25 35:5,9 37:1 38:12,22 39:2 39:13 40:4,7 41:7,24 42:4 42:21 43:17 44:19 45:2,5 46:18,21 47:3 48:9,23 49:22 50:2,10 52:11 52:20 53:9 54:6 64:25 68:11,18 71:5 71:12,20,25 72:10,19 73:2 73:5,9 74:12 74:13,19 75:9 77:7,9,15,16 78:16 79:13,14 79:20,20,25 83:16 84:23 85:4,14,16 86:3,5,10,11 88:24 89:5,16 90:6,10 91:14 91:22 92:18,24 93:8 94:9,12 94:20,22 95:2 95:6 96:14 97:6 98:15 100:1,9,12 104:13 106:4 106:16 109:11 112:3,16 113:4 113:9,10,18,20 114:10,25 115:3 116:25 119:17 120:5 122:23 124:10 124:12,16,19 128:1,7,14 129:11 131:13 132:23 136:3 136:12 140:24 141:4 143:4,13 144:19 145:1 145:10 146:5,7 151:4,13,17,24 154:17 155:4 156:4,6,19,21 159:24 161:11 164:18 165:5,8
Department's 20:12 25:3,15 26:19 27:22 28:21,25 29:8 34:5,17 36:5 36:19 49:15 65:2 70:18 73:12 76:25 85:9 87:7 88:18 90:2 91:22 94:17,23 95:25 100:13 101:9,10 105:10 113:22 116:15 117:11 133:4,23 134:3 135:21 136:21 137:1,11 143:11 145:16
Department-is... 145:8
depended 137:17 147:14
dependent 43:4 43:5,7 87:15
depending 20:2 72:18
depends 135:9 139:1 157:1,25 158:6
DEPONENT 170:1 171:1
deposed 8:13,14 122:13
deposition 1:9 3:12,13 4:6,11 4:14,22 6:12 15:18 16:6 20:23 25:7 27:18 29:12 40:2 48:18 74:8,12,17 75:23 96:23 99:10 102:23 103:1 112:6,9 119:7,13 120:13 121:20 144:12 169:8 170:5 171:4 172:6,8,13
depth 64:20
describe 30:10 56:3 71:2 117:14 140:10 140:12 143:25 144:2
described 133:7
describes 42:11 117:19 163:6
describing 118:11 138:2 140:16 148:5
description

47:15 139:25
descriptions 56:6
designated 6:7
designees 1:9
detailed 148:5
determinate 52:21
determination 3:18 19:23 37:9 41:15,16 41:19 42:5 45:3 50:3 60:18 70:20 77:8,10,15,16 77:21 87:9 88:11 90:10 93:8,25 94:12 94:13,22 95:1 106:25 111:5,8 111:13 112:4 113:10,10,18 113:21,23 115:3 116:21 117:8,10 136:13,24 137:14 155:13 165:8
determinations 37:7 46:4 87:12 142:9 146:7 155:16
determinative 69:11
determine 21:21 22:5,9 23:4,6 23:16 41:12,24 44:19 45:8 48:2,3 49:23 50:15 54:13,19 60:2 71:14,16 82:18,19 96:20 106:23 107:21 130:7,12,21 132:9 134:9 136:3 137:22 138:5,15 154:24
determined 67:6 72:4 95:23 98:10 109:11 130:16 143:19
determines 45:5
determining 39:10 42:5,19 59:25 61:8 70:24 87:24 110:25 155:11
developed 42:19
development 11:2
dictate 65:25 109:20
differ 13:5
difference 83:15 92:23 105:24 106:14 109:23 110:4,22
differences 110:18 128:20 133:25 137:7
different 10:7,8 10:24 14:25 20:2,23 23:23 36:3 40:16 42:20 46:19 54:7 57:12 62:19 64:12 66:10,13 73:4 74:2 83:14 85:6 90:16 91:25 92:2 95:16 98:8 108:3 109:10 110:14,15 130:1 134:6 137:23,24 140:18 141:1 146:8,11 148:25 154:13 155:17
differently 32:21 84:19 95:18
difficulties 144:13
direction 16:19 172:11
directly 149:9
disagree 103:18 154:1 163:9
disagreed 102:24
disagrees 74:12
discuss 142:25 143:23 145:25
discussed 17:8 45:10
discusses 91:21 145:18
discussion 7:13 77:21,24 78:20 91:9 100:5,12
discussions 18:22 19:1
dispute 112:18
distorted 139:13 139:24 142:2 157:2,3,12 158:23 159:19 159:20
distortion 98:9 103:8,15,20 104:2,13 108:25 110:5 110:15,23 129:20 137:25 139:17,22 140:19,22 143:12 144:20 145:17 146:10 147:16 148:2,3 148:4 157:4,6 157:7,8 158:4 158:13,16,19
distortive 104:8 104:8 105:1 109:18 159:22
distribution 163:14
division 151:20 154:15
divvied 5:20
document 145:21,23
doing 14:22 16:5 17:25 26:24 33:23 34:2,18 36:21 37:5 43:13 55:14,19 56:12 57:7 58:21 59:11,24 67:14 83:8 101:18 102:1,3 111:3 118:8 121:10 125:4,9 125:10 130:3,5 130:16 132:4 132:24 139:4,8
dollar 107:11
domestic 9:22,23
Don 149:9,10
draft 144:4
drafting 17:18
draw 108:12,14
drive 7:4
driver 163:19
driving 47:16
due 144:13
duly 4:2 119:2 172:8
duties 12:6,9 13:4 14:14
duty 13:23 14:21

E

E 3:1
Earl 150:10,15 150:17
earlier 8:12 28:5 51:14 55:9 57:6 62:24 68:5 71:8 79:19 81:18 88:23 90:9,14 95:17 96:6 101:6 104:6 105:25 108:14 112:9 118:18 127:23 134:13 142:7 160:3
earliest 149:13
early 9:20 124:5 149:5
earn 154:19,19 154:21
east/west 68:15 69:16,19
easy 38:10
economic 80:19 81:9,14 82:3 82:17,23 83:9 83:23 84:5 111:11 133:13 154:15 155:1
edge 42:13,15
education 9:12
educational 9:6 123:22
effect 63:2 146:22
effective 29:6
effectuate 128:11 130:2 132:19 133:21
eight 10:11 11:12 78:15 122:15
eight-month 14:18
either 8:23 22:21 38:14 74:22 94:8 97:4 98:11 111:2 143:11
either/or 106:9

161:19,22,25
eliminated 164:14
eliminating 166:2
else's 13:2
emails 123:20
employed 172:12,15
employee 163:18 172:15
employees 87:2 87:3,6 159:17 163:16
employing 130:1
employment 9:16 124:9,11 128:10 132:18 133:21
enactment 29:8
encompassed 164:3
ended 1:14 18:10 118:14 126:23 144:24
engage 49:22
engaged 154:16
ensure 41:17 46:17 146:6 155:15
entails 10:19
enter 63:18 65:16,21 108:7 109:12 121:10
entered 98:19
entering 67:10 109:9
entire 14:7 20:17
entirely 5:12
entities 81:12 82:1 83:17,17 83:21 84:2,4 85:14 87:6,8 87:17,21 91:5 101:8 110:11 114:15 131:20 132:6,10,14 139:18,20,21 156:12 157:9 157:15,17 158:3,14,17,19 158:22,24,24 159:2,4,11,18 159:22 163:19
entitled 29:15 65:1
entity 56:12 78:17 81:14 87:22 92:25 115:14 131:15 132:13 140:3 155:1,2 156:23 157:6,7 158:10 158:15,16,20 158:21 159:13 159:15,19 165:23 167:8,9 168:1
entity's 92:20 157:2
entity-specific 81:22
entries 51:16
entry 50:11 52:18,19
equal 67:22
equally 67:21
equitable 90:4,8 91:23 92:3,5 128:11 130:2 132:19 133:22 133:23 134:5 134:17,21,23 155:7,15
especially 120:23
ESQUIRE 2:3,8
estimate 32:11
et 40:4
evaluate 71:5
event 31:10
everybody 47:15
exact 66:14 149:6
exactly 7:20 14:13 62:25 67:15 70:6,11 76:8 122:16 126:3 149:12
examination 3:4 3:5,6,8 4:3 81:22 112:1 116:12 119:3
examine 48:23 81:8
examined 82:16
example 5:18 40:3 43:18 69:15 109:4,7 129:24 136:19 139:13 156:11 157:19 159:1 165:17
examples 40:14 43:7 68:19,20 68:24 142:10
exception 31:14
excuse 40:17 106:13
exhibit 3:13,14 3:15,17,18,20 4:20,21 21:2,6 25:7,8,10,11 29:19,20 77:11 77:16 93:8,9 93:12 112:4 119:23
exhibit-wise 77:14
exhibits 3:11 19:5,10,12,14 93:5 126:10
exist 43:1,3
existed 80:16
existence 69:10 103:23
exists 156:7
exit 143:24
expand 54:15
expect 5:11
expense 166:7 166:11,13 167:10,15
expenses 52:24 165:17,21,22 168:9
experience 17:1 63:8,10,22 64:2 126:4
expert 71:21 73:13
expires 172:25
explain 50:9
explaining 60:21 107:7 118:9 138:1
Explanation 3:20 93:10,12
explicitly 79:19
extent 75:3 77:2 79:15 115:15 128:5 131:12
extra 99:14

F

fact 18:14 25:19 36:22 37:1 40:20 91:11 118:6 131:14 152:7 163:18
factor 39:10 52:15,20,22 53:7 54:18 56:17 60:1,7 61:18 62:3 70:24 135:4,8 135:14,14,16 135:19,23 151:25 158:11 160:2 161:14 162:6
factoring 57:7 68:20
factors 35:9 47:20,25 48:8 48:21,23 49:7 50:4,6,10 52:13 67:18 68:1 69:1,3,4 81:17,18,21 104:5,6 106:18 107:1,2,17,18 107:24 110:1,2 110:9 155:3
facts 23:24 44:2 44:8 60:22 64:11 69:10,11 77:6,9,21 78:9 79:9 90:6,9,21 90:25 91:10,11 91:13 92:2,4,7 104:21 106:9 106:10 109:7 114:1,14 116:17,19,22 116:23,23,25 117:3,8,9 118:19 139:1 156:9
factual 76:24 77:5 79:13 84:24 85:1,13 85:17 90:2 92:1 94:3,13 109:16 110:1 111:14,16 113:22 116:15 165:4
fail 96:1
failed 79:21
fails 156:22
fair 20:10,11 22:9 41:18 52:9 54:13,14 54:16,16 55:8

55:13 93:19,20 106:15 111:5,9 111:15 126:4
fairly 21:16,22 22:1,5,10,14 23:11,25 26:16 26:16 47:5 48:3,24 49:24 69:20 70:1,21 75:3 77:2 79:15 83:12 87:10,25 89:1 103:9,17 105:7 106:5 107:13 108:25 115:15 128:5 130:17 131:11 136:4 137:15,19 138:3 140:4 147:23 151:21 159:12
fairness 127:1
fall 23:24
familiar 6:15 16:14 21:12 25:4 29:25 96:15,17,19 120:13 167:25
far 15:9 17:7 33:20 36:4,24 45:15,16 53:5 54:24 61:8 63:11 89:5 91:15 110:25 118:7 134:21
fast 166:4
favor 52:1,12 58:3 60:5
federal 45:12 49:9,11 164:15
fee 44:5 51:18 68:15
feedback 127:10 128:22
feel 6:4 16:23 37:15 72:24 74:21 84:22 87:11 89:19 103:13 105:10 110:2 116:6 117:6 119:8 157:3
feeling 60:19
fees 51:17 98:17 164:7
felt 16:20 33:17 33:18,21 34:10 36:11,22 60:9 60:11,12 65:5
fifth 62:5
figure 55:23 61:7 64:3 76:1 77:20 100:19 108:9,11 116:24
file 40:16 49:8 49:10 131:17 156:8,20 157:22 163:20 164:16
filed 135:1,15 152:3,20
filer 103:24
filer's 132:2
files 155:2 158:10
filing 75:6,8 76:4 78:18 127:25 130:4 131:15 131:21,21,24 132:8,14 133:9 139:20,21 156:14 158:8 159:5,22 165:19,20,25 166:17 168:2
filing-wise 118:10
Film 151:8
final 144:10
finance 9:8
financially 172:16
find 37:18 38:10 76:11,12,13,16 76:19,20 82:11 101:16 108:19 117:13,16,16 170:5 171:5
finding 91:14 101:9,11
findings 85:4,9 85:17,21 86:4 110:1
fine 4:7 15:25 37:17 47:9 74:4 78:1 86:10
finish 15:7 69:23 121:1,3
finished 7:1 10:24 15:11 122:4
finishes 120:22
finishing 15:10
first 4:2 8:3 9:25 12:11 19:8,18 20:12 21:6 44:17 45:23 50:6 88:22 107:25 112:16 112:24 117:18 119:2 126:8,15 127:7,20 130:7 131:9 134:16 139:7 141:19 147:9 155:10
five 12:18 13:10 63:14 66:4 108:5 109:11 112:5,6 114:6 116:19 117:19 150:3,3 159:4
five- 7:18
five-minute 47:7 73:24 74:1
flag 38:9
flagging 48:14
flip 35:24 106:18
Floor 2:4
flow 42:25 54:9 55:17 57:14
focused 79:12 85:4 88:18 145:7
focusing 79:6
folks 10:9 30:22
follow 23:17,17 24:17,19,19 32:1 99:25 165:3 168:14
follow-up 116:11
followed 149:12
following 50:25 100:4 109:5,22 132:17 170:7 171:6
follows 4:2 119:2 151:11
footnotes 68:6 68:11
forced 122:24 129:16
foregoing 170:4 171:4 172:6,8
foreign 10:1,7 10:12,14,15,16 10:19,19,21 11:6,13,14 12:3,7,10,15 14:5,24 124:24 124:25 125:2 141:6 148:16 148:25 149:1,3 149:7,8,11,16 149:20,21,24 149:25 150:2,3 150:3,4,15
foresee 72:8
forgot 101:9 134:12
form 34:8 35:11 37:22,25 38:4 84:8 112:25 113:13
formula 27:1 48:24 106:20
forth 10:13 12:24 16:21 17:10,13 29:13 36:13 42:12 53:1,17 54:11 56:6 57:14 64:13 65:24 67:3 71:1,2 78:4 81:17 90:21 97:20 104:22,24 107:9 108:21 117:17
forward 36:20 37:5
found 29:14 69:6,15 115:7
four 62:17 63:14 66:4 82:11 108:5 109:10 109:13 117:18 135:8
fourth 57:24 62:3 128:23
frame 19:21,24 20:3,22,25 29:5 41:10 145:2 147:13
frames 39:4
free 119:8
frequent 32:20
frequently 31:16 32:5,9,17
fresh 118:8
front 5:16 17:18 18:7 21:9 47:16
full 8:9 37:6

69:12,20,25 97:22 122:10 157:21
fully 56:16
function 43:10 43:20,22 54:23 91:6 108:20 163:12 164:11
functions 102:4 162:17 163:10
further 162:14 168:15 169:1 172:14
future 72:9

G

Geer 2:3 3:4,6,8 4:4,19,24 5:15 6:1 15:21 16:1 16:8 21:5 25:6 25:14 29:17,22 34:15 37:13,24 38:5,8,11 47:4 47:11,17,18 48:13,17,20 74:4,6 75:20 75:25 77:12,19 84:9,13,17 93:6,15 96:18 96:25 99:7,13 100:24 101:2,4 101:5 112:10 112:25 113:2 113:13,15,21 114:9,24 115:17 116:11 116:13 119:4 123:10 127:14 128:25 129:4,9 144:14,16 169:1,5
general 3:15 7:24 8:16 19:19 20:14 25:4,9,11,16 25:22,25 26:5 26:10,13,23 27:21 28:3,6,9 28:24 31:1 33:7 36:23 39:16,21 42:23 44:24 45:25 63:13 113:8,12 120:14 127:24 132:25 140:14 142:15 145:4 145:11,15
generally 44:23 81:13 93:17 139:19 140:13 141:15
generate 164:11 164:12 166:16 167:16
generated 165:18,21,22 168:11
generically 93:17
getting 10:8 17:23 49:14 56:1 59:9 67:16 73:21 127:10 128:22 147:8 150:16
give 12:5 32:10 43:6 61:11 65:22 76:9 105:13,16 109:3 127:4 156:10
given 144:22 146:9
gives 25:19 98:7
giving 8:18 33:19 34:18 35:1 68:19
glad 120:17
go 7:12 8:2 12:19 15:17,22 16:4,16,19,22 19:15 23:16 24:1 31:12 36:12,15,17 38:9 43:21 44:15 48:14,15 49:16 52:6 58:25 62:10,15 62:17 64:6 68:9,10 69:12 69:19,25 70:10 70:15 72:7,23 76:22 88:16,17 90:1 96:4,22 97:14 99:7,17 113:23 114:7 119:25 121:22 123:2,19 149:18 150:24 151:20 167:1,3 168:19
goal 24:19
goes 33:20 42:13 45:17 65:25 74:24 106:20
going 5:20 6:16 8:2 16:10 19:4 20:17,18 21:6 23:6 24:22 31:14 34:14,23 36:20 37:5,7 38:9 40:1,13 47:1,14 48:7 49:6,22 51:10 51:10 65:3 66:23,23 68:10 69:23 70:6,9 70:12 71:9 74:18 76:2,21 81:3 83:10 85:7,20 91:25 92:2 93:9,16 93:23 95:19 97:1 99:17 100:3,17,17 103:4 104:17 105:16 106:7 117:22 118:1,7 119:6 120:3,24 122:2,3 126:7 126:14,21 127:20,22 131:1 134:5 136:1 153:11 156:2,3 159:2 162:13
good 14:1,1 33:8 47:6,8 61:16 70:6 77:13 79:11 119:7,19 120:25 121:2
goods 60:2 62:7 154:23 166:10 166:11 167:10 168:5
gosh 82:7
gotten 11:22
graduated 9:8 9:16 123:23,25
granted 28:10
grants 28:11
great 76:18
gross 161:23
ground 6:16 120:14 156:9
group 10:10,16 10:16,22,24 11:14 12:10,10 12:11,14,15 13:12 45:12 54:4 57:8 58:12 64:6 68:16 75:13 78:16 83:12 85:6,13,16 88:6 98:2,4 100:2,6,13 101:11,15,17 102:12 110:12 114:12,16 115:2,18,24 116:3 129:23 130:23 149:20 152:19,20 153:18,20,22 156:25 157:1 157:14,16,22 159:20 160:1 162:22,25 163:21
group's 115:20 154:4
groups 148:25 163:16
growing 78:11
guess 34:16 36:3 44:10 49:13 60:24 67:14 68:22 100:8,10 103:25 107:15 107:16 118:6 142:17
guessing 123:18
guidance 17:17 18:6 24:18 30:22 31:2,11 32:24 33:2,3,5 33:18,22 34:13 35:6,7 37:3 39:20 45:9 46:13 89:18 98:8 143:10 144:18 145:1,5 145:8,13,13,15 145:16
guide 42:24
guided 16:20,24
guidelines 41:11 44:18 63:6
guides 24:17
gut 60:19
guys 63:5 90:16 110:5

H

H 1:16 172:5,21
half 7:18 12:15 70:10 122:2 149:5,23
halfway 115:5
hand 62:10,10 62:17,17
handy 29:23 150:21,23
happen 13:25 45:14 102:5
happened 10:23
happy 6:20
hard 19:6 106:1 120:21 158:2
harder 6:22 7:8 109:21
harm 34:6
head 7:7 76:12 82:8
heads-up 105:14 127:5
hear 127:12
heard 121:15 136:22
held 10:16
Hello 119:5
help 35:14 46:17 66:2 118:16
helped 14:11 33:10
helpful 72:1,3 73:11 105:4
helping 10:11 12:23 14:19
helps 121:15 129:5 166:16
Hertz 113:14
Hey 119:6
high 72:18
highly 78:11
hire 61:23,24
hired 12:11,13 61:13,14 149:20
history 9:17 124:9 125:20
hit 95:10
hoc 46:23
hold 30:8 75:21 82:9 117:13 150:23 159:16
honest 123:16
hope 6:2
hopefully 52:7 168:21
hour 7:17,17 122:2,3
How's 119:6
hurdle 134:6
hurricane 123:12
hypothetical 61:11
hypothetically 64:16

I

idea 33:8 52:8 120:9 167:24
identical 56:9
identification 4:23 21:4 25:13 29:21 77:18 93:14
identified 44:20 44:21 126:9
IDR 143:15
II 90:17
Imagine 76:12
impact 25:18 26:1,5 27:3 61:18
impacting 26:10 26:13
impacts 25:16
implement 30:11 32:25
implemented 30:23
implying 146:24
important 67:19 117:4 162:18 163:17
impose 39:13 129:25 143:22 157:13,15
imposed 130:9 143:18,20
imposes 89:16
imposing 51:22 52:12 156:24 157:15
impression 32:3
inaccuracies 94:13
inaccurate 94:8 94:16 102:24
include 47:24 129:18,22 130:10,22 151:15 160:17 160:20 163:23
included 39:4 41:14 98:2,6 98:13 160:9 161:7 164:21 166:9,11,14 167:10 168:5
includes 39:15
including 98:16 156:14
income 26:24,25 27:11,20 53:13 65:8 75:16,16 78:25,25 83:13 92:12,15,20 93:2 98:5 99:22 105:17 105:20 106:17 106:21,22,24 107:18 108:18 108:24 109:1 124:22 128:12 128:15 130:5,6 130:10,23 131:2,3,6 132:2,3,5,13 132:16,21,22 133:11,17 135:3 137:22 138:6 139:14 139:14,15,16 139:20 140:2 151:21,24 152:17 153:1,4 153:6,13,14,19 153:23,25 154:4,5,9,15 154:19,20,21 154:24 155:24 156:15,16 158:3,9,21,22 159:14,21,21 160:1 161:19 163:19 164:12 164:13,19 165:18,22,24 166:6,13,14,16 166:21 167:16 167:17 168:9 168:10
income's 154:25
incorrect 94:4
incurs 167:15
independently 108:20 118:6 156:21
INDEX 3:11
indicate 49:4 110:15 164:5,6
indicated 134:8 134:8,12 139:19 140:25 141:25 142:2 143:18 145:24 164:23 165:8
individual 6:9 8:5 13:19 15:17 19:12 53:23 87:8,17 87:22 92:20,25 101:8 102:3 138:12 141:5 144:22
individually 88:10 145:24
industries 62:6
industry 31:4
information 16:18 37:20 62:2,23 143:1 144:22 147:3,8
informational 56:5 70:25
infrequently 31:15 32:9
initial 31:6 143:15
initially 85:11
initials 167:24
input 18:6 31:4
instances 20:1
instruction 19:19
instructs 7:11 121:22
intent 162:9
intercompany 51:16 53:3 59:10 72:17 79:1 81:23 84:25 103:23 107:8 108:2 130:13,14 132:15 140:1 140:10,11 154:20 160:12 160:14,20 161:20,22,25 164:9,12 167:19 168:11
interest 51:18 52:24 53:1 57:6,14,22

58:2 98:17
interested 93:24 103:3 172:17
internal 46:20 124:14 164:16
interpretation 20:13
interpreting 28:6,12 35:3
interrupted 123:11
inventory 160:24 163:15
investigation 80:8
investments 57:3,8,11 108:4
investors 164:15
invoke 22:4,7 23:7,10,13,22 24:4,8,12,23 35:10 36:14 38:23 40:8,14 41:7 88:18,25 89:6
invoked 32:13 37:4 40:5,20 79:20
invokes 89:7
invoking 112:12 122:23
involved 15:6 18:11,13 96:6 125:12,17,20
involvement 14:10 15:23 18:10,25 19:2
involving 68:14
issuance 38:25 39:15
issue 8:17 29:8 33:9 38:16 39:4 77:22 104:14 115:15 126:24 127:6 127:20 139:3 155:19
issued 30:20 32:23 35:19 38:15 39:16 98:15 145:2
issues 9:2,3 46:19 53:5 122:17,18 127:1 147:12
issuing 31:5
it'll 168:21
items 77:8
IV 47:22
IV(C) 47:25

J

January 9:19,25 10:4,6 14:19 19:21
JDC 10:10,13,21 10:25 11:1,7,9 14:7,15
job 11:2 12:6 13:2 14:14,23 45:17 120:25 121:2
journal 50:11 51:16 52:18,19 109:9
Jr 1:10 3:3 4:1 8:11 170:3,25
jump 5:21 100:18
jumpy 100:21
June 35:19,21 35:22 36:1,7,7
justified 55:19 56:12 110:19 111:1

K

keep 16:6 147:8
kept 77:13
kind 6:15 10:24 12:6,18 15:11 16:17,24 17:2 17:10,11 38:19 42:11 46:12,20 46:22 50:23 52:7 57:5 58:12 59:9 62:9,10,16 63:5 66:4,9 67:1 79:18 81:11 90:21,25 91:21 95:9 98:7 100:17 103:21 105:13 106:25 107:10 108:5,22 110:9 117:5 118:9 121:12 139:22 144:14 145:9 156:9 157:25 158:2
King 1:10 3:3 4:1,5,5 8:11 119:18 120:20 170:3,25
knew 120:24
know 4:10 5:7 5:13 6:3,5,15 7:19 16:2,4,20 16:25 17:8,12 19:14 20:4,4 24:16 26:12 31:19 32:7,8 32:16 35:15 37:10,16,17 38:12 40:23 43:9,11 46:24 48:11 50:16,21 51:1,13,17 52:4 53:19,19 54:25 56:3,23 59:7 60:25 61:5,13,24 62:12,14 63:6 64:7,10,10,23 67:2 70:11,16 73:14 76:2 77:23 85:13 86:11 88:4 95:17,19 97:3 99:15 102:22 104:3,22 105:3 105:25 108:15 108:20 111:9 112:6 120:3,10 120:12 121:11 122:5,13,15 128:17,19,25 135:7,7 136:21 141:19,21 142:19 143:20 148:20 150:13 154:2,3,6 163:2,2,3 164:6 166:12 167:4
knowing 6:23 127:2
knowledge 33:16 33:23,25 34:4 37:7 39:9 72:13 94:5,10

L

labeled 112:5,5
lack 83:22,24 84:5,5,25,25
lacked 81:14
language 66:7 75:1
laptop 74:2
larger 55:1
law 1:1 4:13 21:11 33:20 34:12 72:24 90:22 119:14 165:15
lead 14:12
lease 159:17
leave 126:12
leaves 5:10
legal 27:18,23,25 28:25 77:5 84:12,22 113:3 113:7,11,17
legislature 34:19
lending 57:6
length 51:5 59:10,25 71:2 71:11 95:24
let's 5:7 30:8 35:25 41:20 43:18 50:6 57:2 61:13,14 62:5 65:15 69:15 70:15 76:23 85:3 88:17 90:1,20 93:4 95:9 96:4 98:15 99:2 109:13 121:18 126:9 129:1 137:4,4 148:23 151:20 156:11 159:4 162:6
letter 143:15
level 55:19 59:1 60:19 65:12 111:19
levels 54:8 55:10 56:9,11 108:3 109:10 110:15 110:22
Liberty 2:4
license 98:17 124:3,4
lifer 13:22
limitation 133:15
Linda 13:17 141:7 148:18 149:2 150:1
line 53:19 61:1,1 106:1 108:13

108:15 170:9 171:9
lines 54:7 106:1 108:12 111:2 162:22
list 67:25 68:1,3 113:11,16
listed 47:21,25 48:22 62:11,20 77:8,9 128:16
listening 127:16
litigation 118:15
little 5:16 6:22 16:15 17:2,23 66:13 68:5 70:13,17 76:10 79:5 83:14,20 84:18 91:18,20 100:21 109:2,3 120:9 162:13 168:23
loading 163:14
loan 53:3
located 132:7,8 148:17 163:11 163:14
LOCATION 1:15
long 7:21 11:16 13:24 47:5,13 59:3 88:4,5 102:25 105:3 109:25 114:2 124:1,2 142:18 146:17 148:6 148:21 149:13
longer 10:21 94:8,17 104:25 105:1
look 19:13,15 21:10 22:13 35:9 42:24 45:2 46:3 49:7 50:6 51:18 52:5,13,21,22 52:25 53:6,11 53:12,14,18,20 55:2,18,21,22 56:2 58:17 59:4 61:6,9 62:5 63:13 64:11 65:15 69:1 72:22 76:17 79:25 80:3,11,15,18 81:13,25 82:6 82:8 85:14,15 88:5,5,12 95:12 99:17 105:15 107:16 107:17 110:17 111:16 112:15 116:18 118:8 123:19 133:19 142:9 150:18 152:1 153:16 153:22,23 163:6
looked 4:16 16:17 43:2 56:18,21 60:17 61:15 66:15 80:20,25 81:16 82:5 106:22 118:5,7 119:21 132:21 143:15 143:16 163:7
looking 19:10 42:4 44:12 45:17 50:4,10 51:4,8 53:9,11 53:22 54:8,17 54:22 55:10,14 57:11,21 58:9 59:20 61:4 62:8,11,22 63:2,12 65:20 71:1 72:19 74:25 75:1,2,5 75:6,16 76:22 76:24 81:23 85:12 87:17 90:1,14 92:18 93:1 98:8,12 101:24 106:16 106:17,23 107:2,6,11,11 107:18,20,25 108:23 110:9 111:2,8,10,12 111:14 112:15 112:17 113:9 113:20 114:14 116:21 118:4 127:7 128:7,14 131:14,19,23 145:15,15 152:15,18,19 153:3,11,14 156:25 159:10
looks 35:18 42:22 73:16 77:23 78:15 114:25 155:4
lose 78:5
lost 10:9 92:25
lot 7:13 13:25 19:23 43:24 44:8 51:15 56:24 57:13 70:9 78:6,20 117:17 128:22 132:12 154:4
loud 121:8,13
low 72:18 73:21 139:19
lunch 7:21
luncheon 99:12
lying 54:12

M

M 2:3,8
ma'am 96:17
main 10:13 14:20 78:9
major 79:3 123:24
making 42:5 45:3 46:4 47:2 53:15,25 54:10 54:21 57:8 58:1 64:7 73:15 84:13,22 136:13,24 137:13 142:9 151:13 155:13
manage 12:16 12:24
manageable 85:8
managed 12:9
management 68:15
manager 10:18 11:20,23 12:8 13:6,7,18 149:1,2,7,9,11 149:24,25
mandatory 22:21
manner 89:21 146:8 148:15
manufacturers 40:3 41:1
March 172:25
margin 64:20
margins 53:7,15 53:16,22 110:10,11,18 111:1
Marie 1:16 4:19 7:4 25:6 29:18 38:8 47:16,17 48:13 77:12 93:6 172:5,21
mark 29:18
marked 4:22 21:3 25:12 29:21 77:17 93:14
marks 82:14
markup 159:18 166:9,10,14,16 166:25,25 167:6,11,18 168:6
master 82:12
matched 165:23 168:10
matching 165:2 165:5,9,13,20 166:18 168:8 168:12
material 145:6
materials 46:7 136:11 142:8
mathematical 111:12 155:23
mathematically 152:13
matrix 63:6
matter 18:15 40:8 41:7 43:17 44:11 74:8 77:1 85:5 89:7,16 90:5 108:10,11 109:23 113:23 159:25
matters 112:18
mean 28:16 37:22,24 40:17 49:11 50:21,22 52:2,3 57:4 64:12,15 67:9 80:11 83:4 102:7 107:19 107:23 110:23 125:22 152:2 155:25 163:5 165:22
means 53:19 57:9 91:24 103:8 121:9 127:24 133:8

133:24 154:17 154:18 165:16
meant 83:2 103:16
measure 66:19
Media 3:15 20:14 25:4,9 25:11,16,22,25 26:5,10,13,23 27:21 28:3,6,9 28:24 30:25 33:6 36:23 39:16,21 42:23 44:24 45:25 113:8,12 132:25 140:13 142:15 145:4 145:11
meet 52:3,3
Meeting 2:4
meetings 142:25
member 26:2,6 30:16 41:12,25 42:6 44:20 45:6 114:11
members 41:13 45:8,14 85:6 156:7 157:21
mention 56:15 121:6 134:13
mentioned 8:12 17:9 43:19 55:2,9,21 57:1 57:5 75:19 96:5 99:23 113:6
met 24:10
method 21:15,16 21:22 22:1,14 22:17,23 23:11 24:5 25:1,23 27:1 28:18 29:2 30:13,21 31:7,8 32:12 32:25 41:19 48:3 49:23 68:13 69:20 70:1,21 75:3 77:1 79:14,21 87:10,24 89:1 89:8 90:4,15 90:19 92:11 95:3,7 96:1 105:6,19,20,22 105:23 106:5 109:24,25 110:3 116:16 117:1,11 118:20 125:25 128:10 129:15 129:21 130:2 130:18 132:19 133:13,18,21 134:11 135:4 135:18,19,23 135:24 136:4 137:14,19,21 138:3,5 140:4 140:7 142:3 143:17,19,22 147:20,23,25 148:1 151:5,6 155:5,11,14 156:22 159:12 159:25
methodology 29:14,15 30:5 30:17 33:15 100:4
methods 33:12 88:20 89:11,21 89:23
Michigan 86:1 87:1 98:1,3,13 114:19 161:13 162:19
middle 17:18
million 105:17 105:20,22,22 105:24 106:3,3 106:6,12,13,14
mind 8:9 48:13 58:3 59:8 60:5 64:3 104:2,12 118:19 168:20
mine 30:9
minute 48:16 76:9 99:8
minutes 168:22
miscellaneous 10:22
mismatch 167:22
missed 38:18
misunderstand 147:1
misunderstan... 81:1
moment 73:19
money 57:7 92:25,25 164:7
month 142:25
months 10:11 11:12
morning 4:14
mortar 163:1
mouthful 93:19
move 19:4,12 22:11 29:4 40:1 76:20,21 76:23 85:3 93:4 95:9 120:10 154:12 156:2
moving 47:19 101:3 134:25
MTC 142:16,20
MULLINS 2:3
multiple 156:7 156:13 159:2 162:22
multistate 124:23
mute 127:9 129:4,6
muted 129:2
Myrtle 148:17 149:2 150:1

N

N 3:1
name 8:9 98:4 122:10
names 8:19 20:18
narrow 117:3
narrowed 117:5
nature 8:17 78:8
near 72:9
necessarily 49:11 104:4,8 106:24 109:20 110:23 142:4 145:5
necessary 65:7
need 5:23 7:19 7:21 16:2 19:9 19:13,14,15 21:9 50:2 56:8 56:11 74:21 75:21 88:15 91:19 119:24 122:4 150:23 156:21 157:24 159:9 168:17 168:18
needed 17:9 33:19,22 34:11 94:21 139:6
negative 34:20
negatives 34:17
neither 172:11
NELSON 2:3
net 138:6 139:14 139:15,16 159:21 164:9
never 43:25 125:17
newer 136:17 143:3
nexus 10:15,20 11:14 12:11,14 13:12 96:14 97:2,7
niche 67:4 115:23
Nicole 2:8 5:13
nicole.wooten... 2:10
Nikki 5:6,21 15:21 19:7 37:13 47:4 73:19 84:9 96:18 99:15 111:23 116:17 169:2
Nikki's 21:11
nine 122:15 167:6
nine's 118:9
non-number/f... 105:12
nonfiler 104:1,1
nonfiling 54:20
normal 36:10 111:18
normally 42:15
north 106:3
nos 7:7
Notary 172:22
notes 168:19
notice 3:13 4:14 4:17,21,25 5:2 19:20 25:7 37:6 41:16 47:15 119:16 119:18,21 137:5
noticing 79:9
November 19:21
number 12:16 58:6 62:10,19 64:8,24 65:14 65:15 70:15 77:13 106:2,6

106:8,10,11,17 109:14,19,19 110:10 114:4 117:20 118:4 119:18 151:14
numbers 71:1 105:8,16,16 106:20 107:3 107:19 108:10 108:11 109:13 110:4,9 139:12 139:23
numbers-based 105:11
numerator 152:12 160:5 161:21 162:1
numerous 91:10

O

object 7:10 34:8 84:8 112:25 113:13
objection 15:22 84:11,20 121:24
objections 121:18,19
obviously 40:24 129:6 158:15 165:11
occasion 45:12
occasions 16:13 23:13 67:9
occurs 131:7
October 1:12 12:14 124:24 149:16
offer 140:13
office 18:10,16 18:17
officer 9:20 172:5
oh 19:18 69:17 76:1 125:5 127:18 136:19
okay 4:8 5:25 7:5 8:8 9:8,18 16:11 19:17,25 20:7 24:10 29:24 30:7 36:2 38:1,2 40:12 46:16 47:8,23 66:6 70:5 78:3 80:10,23 81:7 84:13 88:9 99:5 102:17,20 103:6 111:21 112:8 114:8 115:4 116:9 120:6 121:6,17 123:23 126:9 126:13,19 127:18 132:17 134:14 135:13 150:23,25 151:2 160:17 160:23 161:3,4 162:5
old 135:6,9
older 142:11
on-the-job 45:21 142:13,14
once 18:10 45:5 125:8
one's 88:17 157:3
ones 5:6 86:18 86:19 117:4 119:20,25 134:23 145:10
online 163:4,5
operate 43:12 91:5 156:13 157:18
operating 65:9
operation 138:2
operations 86:24 101:17 148:6 163:17
opine 36:9
opinion 94:18 118:20
opinions 94:6,8 94:15
option 88:24
optional 22:23 22:23
options 133:16
order 26:16 94:22 136:12 167:15
Oregon 151:7
originally 81:5
Orville 1:10 3:7 5:2,10,23 6:5 12:13 13:13 27:16 29:4 73:17 74:20 91:19,21 92:1 119:1,9,10 122:12 126:10 126:21 129:4 129:10 144:17 150:20 165:1 168:18 169:4 171:3,25
outcome 172:17
Outlet 2:9
outline 100:19
outside 44:5 45:12 64:6 107:8
overall 54:24 67:2
overarching 146:5
overlap 5:17,22 91:20 126:23
ownership 117:19

P

p.m 1:14 169:9
page 3:2,12 35:24 48:22 68:4 77:24 78:9 90:10,17 90:22 99:20 112:16,24 113:24,24 114:5,7,14 115:2,8 150:24 170:9 171:9
pages 29:15 30:3 116:19
paid 50:7,12,23 51:2,8,9,15,20 52:25 57:22 64:6 95:21 97:22 168:6
painting 78:10
papers 17:6
paragraph 115:5 131:9,9
paraphrase 62:25 127:22
parent 116:2,4,6
part 10:21,22 13:3 15:23 27:1,22 29:14 30:3 38:14,24 42:8,17 47:22 47:25 50:22 51:5 56:22,25 86:23 88:22 90:23 96:21 98:23 102:2 164:10
particular 5:22 6:3 25:23 26:22 40:14 42:21 77:22 89:10 95:15 107:18 125:12 127:4 135:16 139:2 152:12 159:19
parties 1:15 50:7 54:4 58:7 62:7 63:18 98:19 111:18 154:22 154:23 160:18 164:4 172:13 172:16
party 43:21 51:14 58:11,21 58:24 59:1,19 59:21 60:3,12 61:17 65:17,22 65:25 66:22 67:11,14 104:12,20 107:9 108:7 109:12
password 30:9
pausing 6:24,25
pay 58:11 59:1 59:17,17,19,21 61:17 152:24
paying 44:4 50:16,16,18,20 50:24 51:12,13 51:14 52:10,10 58:2 104:11,23 108:1 155:18 158:16
payment 50:9 104:20 166:22
payments 58:1 103:24
payroll 139:16 159:16
penalties 36:13 36:17
pending 123:15
people 14:2 137:24 138:1 163:9,11
percent 133:11 151:23 152:5 152:10,14,17 152:25 153:1,6 153:13,17,24

155:24 167:7
percentage 61:8
percentages 56:2 61:10
Perfect 100:16 118:3 119:11
perform 43:21 137:12 164:18
performed 97:11
performing 15:4 43:20 55:16 163:10,12
performs 46:21
period 14:18 20:9 38:16,24 39:3,7,14 42:1 45:20 46:10 95:23 99:2 137:3,8 140:25 141:9 144:5 147:10 148:9
periods 29:7 36:7 38:24 115:14 141:1
person 6:23 15:4 61:15 78:8 121:1
personal 14:9 16:5 164:3
perspective 6:9 34:5,18 70:18 134:3
petition 22:16 22:21
phrase 19:20 55:9
physically 50:12
pick 7:8
picture 78:11
pinpoint 66:12
place 14:1 20:25 41:17 46:17 74:14 102:8 137:17 146:6 146:12,25
149:14 155:15
Plaintiff 1:3 2:2
play 62:3 109:14
played 69:4
please 5:21 6:19 63:1 124:18 169:7
plus 142:10
point 10:2 13:8 17:10 22:3 36:24 42:3 47:6 49:13 50:21 71:24 73:14 76:7 109:15 119:24 122:1 147:6 150:10 167:7
Pointe 2:9
pointed 118:18
pointing 77:6
policies 20:24 41:11 44:17 45:7 74:13
policy 24:15 37:9,11 40:7 41:6 136:7 137:1,11 145:20,23
portion 38:15 119:19
portrayed 53:17
position 11:17 25:15 36:5 39:11 65:3 76:25 87:7 90:3 91:23 94:17 95:25 116:15 117:11 133:23 138:16 138:23 139:6 146:19,20,20 147:19 148:7 159:8
positions 94:7,9 94:16,23
possibility 143:17,21
postcollege 124:12
potentially 104:7 142:10
power 73:20
powers 28:10
practice 23:9 24:12,15,16 89:7,16
practices 20:24
predictable 41:18
preface 85:11 126:22
prefer 4:5,8 119:9,10
preferences 42:10
preliminary 144:4
preparing 17:5
present 143:9
preserve 121:21
presume 138:14
pretty 97:13,18
previous 8:20 80:14
previously 8:18 141:25 145:24 149:22,25
price 59:10,21 95:21,24
prices 71:11
pricing 61:14,15 70:16,19 71:6 71:21 73:13 95:11 111:10
primarily 33:6 44:24 45:21 51:1 57:21 78:15 142:12
primary 115:20 136:7
principle 161:16 165:2,5,9,14 165:20 168:8
prior 8:21 17:20 29:7 30:24,25 36:7,18 38:25 39:15,16 96:5 96:7 124:12 125:15 149:18
privy 98:22,23
probably 7:17 15:8 17:23 32:16 37:24 62:14 98:11,12 98:12 122:1,3 126:2 135:7 136:14,17 150:18 161:5 163:5 164:8
problem 70:9 73:3 96:21 120:20,21 121:16 129:3
procedurally 148:13
procedure 4:12 136:8 137:1 140:15
procedures 20:24 41:11,17 44:18 45:7 46:17 146:6 155:15
process 112:11 112:17,23 144:23 146:2
procurement 43:18,20,22 51:17 54:25 55:4,5 56:22 58:13 60:10 63:18 82:14 86:23 95:22 101:22 102:6,8 104:11 161:12
162:16,23 163:10,23 164:7,20 166:22
produce 37:23
produces 166:17
product 67:17
products 43:15 86:16,18 115:23
profit 53:7,14,16 53:22 54:8,21 55:1,10,19 56:9,11,13 58:12 59:1,18 60:19 64:20 65:1,12 108:3 109:10 110:10 110:11,15,18 110:22 111:1 111:19
profitable 56:22 56:25 78:17 104:21
profits 44:6 54:12 104:24 105:1
program 10:8,10 11:7,9
prompted 33:6
promulgate 33:9 34:7
promulgated 29:13
promulgating 29:9 33:15
proof 147:21
property 164:4
propose 129:20
proposed 150:19
pros 34:2
protested 97:22 118:12
prove 109:21 137:18 147:22

147:25 156:22 156:23
provide 30:22 33:5 35:6,7 37:2 62:6 87:3 147:3
provided 46:12 50:8 58:7 60:3 126:20 143:10 144:6,21 162:17
providers 40:4 41:3
provides 144:19
providing 65:2
provisions 128:4 131:11
public 32:24 172:22
publications 24:14
pull 21:8 76:9 112:3
pulling 77:25
purchasing 43:14,14 65:23 68:14 69:16,18
purpose 29:5 31:9 34:12 54:23 65:7 80:16 82:19,21 82:23 83:24 84:6 85:1 111:10 137:17 161:17,24
purposes 37:25 49:9,11 56:5 61:6 70:25 71:17 87:23 93:16 119:7
pursuant 4:11 119:13
push 162:13
put 17:12 30:9 87:12 105:8 106:8 108:23 139:8,10

Q

qualitative 136:23 137:12 137:25 138:10 138:18 139:4 139:10,25 143:12 144:1 144:21 145:17 147:16,18 148:4
quantitative 136:23 137:13 137:25 138:9 138:18 139:4,9 139:12 140:17 143:13 144:1 144:20 145:17 147:16,18 148:3,3
question 6:3,19 7:12,14,15 18:14 31:6 38:3,6 44:17 48:6 61:7,22 65:11 80:2 81:5 84:1,10 85:25 86:8 88:2,14 94:11 94:15,25 95:16 99:16 100:22 101:13 103:12 104:19 105:5 105:11 120:17 120:23 121:2,8 121:13 129:5 129:10 130:16 137:9 153:9 154:7,10,11 155:9 161:2,11
questions 7:10 7:24 8:3 19:23 66:10 70:10 81:4,11 88:15 99:14 111:23 113:21 114:24 115:18 120:8 121:20 122:7 156:4 169:2,3
quick 47:7 75:21 95:12 100:23 168:19
quickly 120:15
quiet 78:8 167:4
quit 125:9
quite 8:21 68:22

R

rare 158:25
rarely 125:6
rate 40:17 59:17 60:4,15
rates 63:19
ratio 26:22 27:10 106:21 139:19 152:11 152:23,24 155:22
ratios 140:20,23 142:6 143:12 144:20 145:18 146:10
read 5:5 19:11 74:15 91:9 94:1 115:11 121:7,12 152:1 169:5 170:4 171:4
reading 78:14 90:24 100:1
real 95:12 100:22 120:15 168:19
realities 133:13
reality 154:15 155:1
really 18:13 32:5 61:5 66:16 75:21 103:3,18 106:16 107:3 107:19 110:8 142:19 144:25 148:20 149:6 164:13
reason 25:21 34:6,9 72:14 103:21
reasonable 61:16 64:4,9 64:21,22 68:13 71:6 90:4,8,18 91:3,16,23 92:3,4 95:7 133:4,5,18,24 134:2,4,10,11 134:19 137:21 138:7 140:7 142:3 147:20 147:25 151:7 155:6,14 163:23
reasonably 155:11
reasons 29:11 30:19 53:6 72:2 79:12,13 95:1,5 138:24
recall 16:10 18:20 46:14 58:20 64:5 80:17 81:21 87:5 113:6 114:12 127:3 134:24 135:6
receipts 161:20 161:23 164:9
receives 166:21 167:19
receiving 111:4
recess 47:10 74:5 99:12 168:25
recollection 30:18 135:5
recollections 18:21,25
record 5:6 8:10 19:11 48:16,19 69:24 70:13 75:24 96:22,24 99:7,11 121:21 122:11 144:12
reduced 172:10
reduces 166:12
reducing 78:24
refer 93:17 115:2 119:24 143:6
reference 26:18
referenced 30:4 42:17 68:5 142:7
referred 113:14 117:7 140:19
referring 53:2 147:4,11 148:9 152:3 167:18
refers 44:23
reflect 79:21 133:13 137:19 138:3 140:4 147:23 158:9 159:12
reflecting 130:17
reflects 154:15 155:12
reg 34:11
regarding 85:5 85:10 112:11 137:11 143:11
regularly 30:21 31:7,8,17 32:4
regulation 29:10 29:13 33:15,24 34:3,7,18
reject 34:19
relate 50:19 106:25 117:10

related 42:24 43:2 50:7 58:7 91:11 114:25 172:12
relatedly 29:10
relates 26:20 47:20 74:7 88:8 105:5 145:16
relating 20:25 35:1 50:23
relationship 45:13
relative 172:14
relevant 71:17 87:9,23 88:10 108:4 114:1,15 117:15,21
relied 27:18 42:2 113:4
relinquish 67:7
relinquishing 67:11
relinquishment 65:18 66:16
relying 28:1 90:7 91:15 132:24
remaining 119:20
remember 25:8 77:12 97:10,16 97:23 98:21 112:13 123:16 123:19 135:10 141:17,21 147:9 149:6 150:9,11
remembered 99:15
remind 11:1
Remote 1:15
Rent-a-Center 20:20 26:23 27:6
repeat 7:14 38:17 48:6,7 86:8 113:6 137:9 153:9 154:10
rephrase 6:19 120:17
report 93:18,25 94:4,7 152:4,9 155:24 164:14
reported 1:16 139:23 149:9 166:15 168:12
reporter 3:9 7:8 121:4 172:1
reporter's 121:9
reporting 13:10 25:20 26:15 27:20 28:17 29:1 30:6,12 30:25 32:13 33:1 35:12 40:5,8 41:8 49:6,17 68:12 69:7 73:8 88:21 89:12,14 89:17,19 90:3 90:7,18 91:15 92:19 95:7 100:3 105:20 105:23 109:25 115:14 126:1 131:1 135:18 135:18,22,22 136:16 137:19 138:3,6 139:18 153:5,7 158:3 158:20,21 159:14,15,25 165:24
Reporting.' 29:16
reports 70:16 71:6 167:16
represent 21:17 22:2,10,15 23:11 26:16 69:21 77:2 79:15 96:1 103:19 115:15 128:5 131:11 162:10 163:25
representative 24:1
represented 103:9,17 104:15 109:1
representing 2:2 2:7 83:13 89:2 105:7 107:13 108:18
represents 21:22 48:4,25 49:24 70:2,21 75:3 87:10,25 106:5 136:4 137:15 151:21
request 144:7
require 22:17,22 131:18 141:2,6 141:16,18,21 141:24 156:19 156:20
required 30:15 68:12 133:10 140:23 141:1 141:11,13,15 141:20 148:9
requirement 42:8 133:20 134:18
requirements 138:9
requires 92:10 100:2 141:8
research 63:25
resolved 38:13 39:2
respond 38:3
response 116:18
responsibilities 14:24
responsible 13:1
rest 78:7 83:1
restructuring 80:1,4,12,14 80:16,19 81:6 81:9,13
result 115:6,12 115:13 151:22 153:11
retail 86:24 101:17,19 115:23 116:8 154:21 160:10 160:16,21 161:8 162:23 163:24 167:20
retailer 40:24 58:25 163:1,8
retailers 40:3,23
retire 14:2
retired 10:2
retirement 11:6
return 133:9 135:2,15 139:14,15,16 152:21 156:21 158:18 164:16
returns 32:19 143:16 156:16
revenue 1:6,9 2:8 3:17 9:19 9:19 20:16,20 20:22 29:6,9 29:14,18,20,25 30:20 34:2 35:18 36:6 38:14,25 39:5 39:15 41:21 44:22 46:1,13 47:21 48:1 68:23 99:17 110:1 124:10 124:13,16,19 133:1,7 136:6 140:15,15 142:10 144:25 150:21 164:16
review 6:16 18:4 80:8 120:14 140:9,12 144:6
reviewed 4:25 74:9
ridiculous 164:22
Riggs 14:11 16:10 19:1
Riggs's 74:8 102:23
right 4:10 7:23 10:17 13:23 19:4,6,8 21:6 24:2,9,9 27:8 29:1,17 35:22 39:25 40:25 44:24 49:2,13 51:3 52:14 53:4,4,4,11 54:21 55:1,12 55:15,20 57:13 57:13,13 63:1 63:4 66:22 67:24 68:25 69:5,8 73:17 80:6 87:5,14 88:7 92:9 95:14 97:23 100:16 101:16 102:8,9,9,13 107:4,5,6,21 107:21,25 109:17 110:24 111:22 116:5 118:22,23 119:11 120:12 123:12 124:10 126:7,21 131:16 134:25 143:5 146:3,17 148:11,15

150:20 151:10 151:19 153:8 153:15 154:5 155:20 156:2,3 156:9,18 159:23 160:7 160:11,23 163:10 165:1 166:23 167:12 167:23 168:7 168:17,24
RILEY 2:3
Rob 4:5,7,10 5:24 6:2 16:9 29:23 37:16 38:12 47:5,19 48:21 70:5 93:16 99:15,25 111:22 116:14 119:18 120:20 126:23 127:23 128:17 136:6 148:24 149:6 149:10,16,19 149:24
Robert 1:10 3:3 4:1 8:11 170:3 170:25
role 9:22,23 10:1 10:13,16,25 12:20 13:18 14:5,7,24 17:5 70:18 97:9
rough 105:16
round 120:21
roundabout 104:19
route 23:16 24:1 72:8,23 83:9
RPR 1:16 172:21
rules 4:12,12 6:16 119:14 120:14
ruling 3:17 29:6 29:9,14,18,20 30:1,20 34:2 35:18 38:15,25 39:5,16 41:21 44:22 46:1,13 47:22 48:1 68:23 99:18 110:2 133:1,8 136:7 140:15 142:10 144:25 150:21
ruling's 36:6
run 66:1 123:21 124:8
running 10:9
rural 86:16 115:23

S

safeguards 146:6
salaries 163:18
sale 67:3 86:16
sales 101:19 124:20 135:3 135:14,16,19 135:23 152:11 152:22,24 155:21 159:14 160:2,5,7,10 160:12,13,14 160:15,17,20 160:21 161:7 161:12,13,20 161:22 162:6,7 162:7 163:4,5 163:13,23,24 164:11,20 166:12
satisfied 24:13
saw 68:22 74:16 91:10 98:3
saying 18:18 23:20,21 24:3 24:6 32:4 52:20 56:8,11 58:23 59:16,16 61:12 69:17 73:3 75:8 82:16,21,22 83:5,10,11,12 83:21,22,23 84:3 85:11 100:9 117:24 117:25 126:22 130:24 131:13 132:21 146:21 154:7 166:5,24 168:14
says 22:14,16 35:25 68:11 72:25 100:1 106:4 111:18 128:3,9,12 131:10 133:4 133:20 151:5
SC 2:5,9 3:14,17 21:2 29:20
SCARBORO... 2:3
SCDOR 3:16 25:12
second 7:1 13:23 53:7 75:22 76:11 82:10 88:3 99:23 158:9
section 3:14 20:14 21:2,8 30:10 40:6 47:22 79:5,6 90:13,14,16,17 90:20 91:10 113:8,24 114:2 120:11 133:3
sections 44:21
see 5:7 22:17 35:25 42:10,12 42:24 43:2 45:14 46:22 50:22,23 51:12 52:2 53:15 55:6,18 56:2 56:21,24 57:13 57:17 58:15,15 62:16 64:11,14 65:6 76:22 77:22 79:3 80:15,18 81:16 82:10 88:6 90:20 95:12 98:5,7,15 99:2 99:24 102:23 109:4 112:23 114:14 117:25 118:2,8 121:18 126:9,11 128:9 129:1,5 131:25 136:19 137:4 144:14 148:23 158:7,24 162:6 164:19
seeing 39:20 54:9,19 62:13 64:5 78:9 79:4
seen 43:25 58:16 58:21,23,25 59:6 63:2,17 63:23
selects 151:4
sell 66:24 67:17 86:17 164:4
selling 43:15 115:22 116:8 154:21,22,23
send 143:7 144:3 144:10
sending 38:2
sense 53:17 105:13
sent 4:15 19:7 119:16 143:14
sentence 68:10 68:18 69:24 76:10 83:1 115:6,11
separate 16:6 49:9 62:11 63:25 85:21 90:13 115:14 118:14 135:2 135:15,18 156:15
separately 62:20 85:15
serve 82:21,23
service 40:3 41:3 65:2 82:12,13 164:17
services 50:8,8 58:6 60:3 62:7 95:22
set 23:24 64:13 68:25 69:1
sets 90:21 151:11
setting 29:13
settled 39:6,10 123:17
settlement 98:19 98:23
seven 78:2,14
shakes 7:7
sham 83:6,22
shams 83:17 84:5
share 136:17
shared 82:12 136:15
sharing 82:7
Sharpe 1:10 3:7 5:2,10 12:13 13:13 119:1,5 119:9 122:12 171:3,25
shift 44:7 65:8 132:15
shifted 132:13 140:2 154:25
shifting 78:25

108:18 130:13 139:20
short 168:21
short-hand 24:5
shorten 88:15
shorter 88:14
show 34:13 43:7 44:13 90:7 157:6,7,8,24 159:6,9
showing 44:6 108:24
shows 43:6 139:13,17 142:2
side 23:5 72:19 111:3,3 129:2 167:21,22
sign 14:1 146:20 148:12 169:6
SIGNATURE 170:1 171:1
signed 150:18
signs 148:8
similar 9:3 14:23 32:24 58:8 62:6,6,8 65:16 66:8 94:25 108:6 122:17 155:9
single 135:3,16 135:23
site 16:12
situation 53:3 57:10 63:3 83:6 109:20 156:18 157:10
situations 68:14 156:5
six 12:18 13:10 13:10 47:20,25 48:8,21 52:2,3 66:4 67:18 81:18,21 104:6 106:18 107:1,2 107:17,24 108:5 109:11 110:1,8 117:19 124:25 150:4 159:4
six-year 98:24 99:4
Sixth 2:4
skip 27:16
skipped 100:20 103:2
skipping 73:16
slightly 95:16
slow 165:11
small 10:10 158:11 159:18
smaller 107:12 108:17 109:18
sold 160:24 166:10,11 167:11 168:5
solely 106:24
somebody 45:11 50:16 58:11,12 58:14 66:22 69:15 104:23 108:7 120:22 149:10 154:9 163:14
somewhat 31:16 31:17
soon 120:10
sooner 7:19 122:5
sorry 10:4,5 38:17,18 47:17 48:6 57:25 58:18 69:23 73:15 77:25 82:10 86:8,9 102:18 103:25 117:23,24 127:18 128:21 137:9 149:18 161:5 167:1,3
sort 15:16 46:7 53:25 59:15 83:18 84:19 103:14
Sounds 98:18
source 53:13 98:5 158:6
sourced 153:2
sourcing 8:20,22 9:2
south 1:1,5,9 2:8 4:11 20:13,15 20:19,21 21:7 26:14,17 29:16 30:5 48:5 49:1 54:14,20 59:12 70:3,22 76:5 77:3 78:18 79:16,22 83:13 85:18,23 86:1 86:6,13,18,21 87:3,16,17,23 88:1,8,10,19 92:20 93:1 96:2 103:24,24 103:25 104:1 104:16 105:18 105:21 106:2 107:14 115:21 116:2 119:13 123:24 127:25 130:5,12,18,22 131:7,14,21,22 131:24 132:2,7 132:8,10,14,16 133:14 136:5 137:20,22 138:4,5,6 139:18,21,22 140:5 147:24 155:2 156:8,14 156:15,17 157:18,22 158:8,10 159:5 159:11,15,21 159:22 160:2,6 161:20 162:7 162:10 163:20 164:20 165:15 165:19,20,23 165:25 166:15 166:17 167:7,8 167:17 168:2 172:3,23
speak 37:10 60:23
speaking 120:4
specific 18:21,25 37:3 38:6 83:20 87:20
specifically 29:11 141:17
specified 37:16
split 12:12
spoke 90:9
staff 10:12 71:21 73:13
standard 21:16 21:21 22:1,14 23:11 24:5 48:3,24 49:23 69:20 70:1,20 75:3 77:1 79:14,21 87:10 87:24 89:1,8 90:15 95:2,25 105:6,18,22 106:5 109:24 110:3 116:16 117:1,11 118:20 136:3 137:14,16,19 140:4,8 147:23 155:11 156:22 159:12
standards 41:11 44:18 45:7 136:2
standpoint 84:24 85:1,14
stands 11:1
start 7:3 15:7 41:20 47:14 50:4 54:22 72:6 88:22 90:25 99:19 105:9 124:18 161:6
started 7:25 9:18 9:19,22 10:6 17:23,24 26:12 36:23 56:15 78:2 122:8 124:16,19 141:19 168:15
starting 4:13 78:5 90:17 132:5
starts 42:9 77:24 90:23 115:6
state 1:1 21:18 21:23 22:3 48:10 49:12,25 75:4,6,8 89:3 103:10 109:1 115:16 122:10 128:6,8 131:13 131:25 135:8 151:15 152:4,6 152:8,12,21 154:25 155:13 172:3,23
stated 24:14 94:7
statement 103:19
statements 94:3
states 70:23 72:5 86:19 133:10 153:2 155:22 156:13
static 128:24
stating 8:9 59:8
statute 5:19 21:7 21:12 22:13

24:18 25:8 27:14 28:2,3,7 28:11,12,13,15 28:17,24 33:19 33:21 34:10 35:2 40:9 75:1 79:20 91:24 92:10 112:12 113:11 126:15 127:9,22 132:23 140:14 156:5
statute's 100:14
statutes 75:15
statutory 70:20 77:1 136:4 140:13 147:22 147:22
stay 18:11
STENOGRAP... 1:16
step 21:20 22:11 23:4 24:10,13 24:20,21,23,24 26:1,5,10,13 151:20 154:14 155:10
Step-by-Step 99:21
steps 23:18 25:16 26:20 151:17
Steve 15:9,10 16:10,11 74:7 74:23
Steven 14:11 15:15 19:1 74:23,24,25 102:23
stop 7:3
stopping 47:6
stops 120:22
stores 43:11,15 86:17,17 160:10,16,22 161:8 163:12 163:15 167:16
stores' 86:24
Street 2:4
structure 80:9
struggling 15:16
studied 93:22
studies 56:1
study 70:19
stuff 7:24 17:16 42:11 43:16 53:14 55:5 57:7 117:16,18
subject 35:15 49:6
submitted 141:3
Subsection 75:2 129:12 151:1
subsequently 146:25
substance 80:19 81:9,15 82:4 82:17,24 83:9 83:10,23 84:5 84:25
substantial 36:11,13
success 162:18
successful 44:4 55:3,5 60:20 67:4 78:11
sufficient 37:25 39:22,24
sum 39:12
summarize 144:15
summary 12:6
Superstores 20:19
supervise 12:22 124:25 125:10
supervised 149:23
supervising 12:21 14:15 15:4
supervisor 10:15 11:14 12:3,7,9 12:13 14:6,25 15:10,12 16:23 17:11 18:5 124:25 125:3,9 138:14,15 139:5 144:8 146:19 148:8 148:12,15,23 149:3,8,16,19 149:21,21 150:2,6,10,12 150:15
supervisors 13:9 13:9,14 46:23 46:25 141:5,7 148:17,22,24 149:14 150:3 155:18
supply 1:2 4:15 14:5 16:14,15 26:25 43:11,15 52:16 56:17 60:8 63:11,14 63:16,19 64:19 65:1 66:21 67:6 73:20 78:24 80:4 83:17,21 85:6 85:22,25 86:6 86:12,21,23,24 86:25 87:22 88:9 89:23 90:23 91:12 92:19,24 95:21 101:8,15,18,19 102:14 103:23 104:11,24 105:2,21 109:8 109:8,9 114:11 114:16,18,21 115:1,2,19 116:1 119:17 125:13,16 135:1 152:3,18 153:6,18 154:3 162:18,19 165:17 166:8 166:21 167:8 168:1,10
Supply's 77:2 79:15 115:13 135:17 153:19 154:8
support 76:25 77:5,22 90:2 91:1,14 92:3 110:3 113:22 113:22 116:15 116:23 117:1 117:10 139:3 140:13 142:6 146:18 147:19 148:7 165:4
supported 138:16,23
supporting 92:4
supports 142:1
supposed 6:21
Supreme 151:7
sure 7:1,20 12:23 23:19 24:3 29:24 34:23 44:16 46:25 50:25 58:13 61:12,25 63:24 65:10 71:10 72:7 73:15 74:18 75:11 80:2 83:2 84:14 95:17,19 97:13 97:18 99:9,18 100:11 103:1,4 109:4 121:15 122:6,16 123:17 126:3 126:12 130:15 134:15 135:8 141:7 148:14 148:20 150:14 162:14 165:3 168:20
surprised 116:25
switch 126:7 136:1
switching 159:23
sworn 4:2 119:2 172:8
synonymous 133:24 134:1 134:18
synonymously 103:15

T

table 54:11,24 55:11,16,24
take 4:11 6:24 7:16,17,18,21 7:22 47:7 61:25 73:19,24 74:1 76:11,14 119:12 121:4 121:25 122:1,3 122:5
taken 1:12 6:12 120:13 165:23 172:6,9,14
takes 67:1 168:10
talk 6:21 7:3 26:12 43:18 56:23 57:2 68:6 91:4 167:2,5
talked 24:20,21 27:21 35:5 38:21 41:20 45:25 66:14 81:18,22 104:5 107:1 108:14

142:21 160:2
talking 17:15 20:3 67:3 78:7 78:10,15,16 81:20,21 90:23 90:25 101:6 102:18 108:21 120:19 121:5 127:16 129:6 137:3 140:18 142:23 145:20 151:3 153:20 155:10 158:23 160:13,14,15 160:25 166:4,6 166:7,20 167:24
talks 25:19,21 42:18 75:10,12 75:15 78:4 143:7
tangible 164:3
tax 27:20 32:19 39:3 40:17 72:24 98:16 124:20,22 133:10 135:2 153:5,24 156:15 157:17
taxable 139:14 139:15,16
taxation 151:22 153:12
taxes 165:24
taxing 131:6 132:6 152:16 153:17
taxpayer 8:18 22:16,21 26:1 26:6 30:16 36:11,15 41:12 41:25 42:6,15 44:19 45:6 64:12 65:16 72:17 75:5,5,7 75:12 76:4,4 100:5,12 122:24 127:8 127:21,24,24 128:2 129:11 129:13,22,22 130:4,8,11,17 130:20 131:24 132:1 133:9 144:4,5 145:25 152:2 153:23 154:16 163:17 164:1
taxpayer's 21:17 21:23 22:2,15 23:12 26:17 48:25 49:24 70:2,21 75:4 75:16 87:25 89:2 92:11 96:1 103:16 104:15 105:7 128:6,12 131:2 131:12 132:20 136:4 137:15 137:18 138:2 140:1 148:6 151:23 152:17 153:13,24 155:12
taxpayers 31:3 31:20,23 32:11 32:15 33:5,11 35:6,8,8 37:2,6 38:13 39:2 40:2,7 41:6,16 46:12,20 62:6 89:22 124:23 143:11 144:19 144:23 145:12 145:19 146:1,9 153:22 155:17 164:3
taxpayers' 48:4
Taylor 15:14 150:8
technical 144:13
telework 73:23
tell 8:16 12:5 20:4 26:11 46:23 53:8 58:8 74:21 91:19 93:6 97:9 105:9 108:10 112:20 113:5 116:22 117:3,9 120:22 121:10 137:6 139:7 151:24 154:17 165:4
telling 69:3 123:8
temporary 10:3
ten 126:3 168:22
ten-minute 7:18
tendency 121:7 121:12
Tennessee 97:14
term 24:5 100:4 100:14 103:7 108:16 127:8 127:21 133:5 134:21
terminology 103:13
terms 17:5 42:5 58:8 59:8 62:8 82:3 128:19
test 41:19 151:11,12
testified 4:2 8:18 119:2 127:2
testify 8:23 123:4
testimony 34:25 88:23 127:5 170:6 171:6 172:7,9
tests 42:19
Texas 78:25 85:23 86:21 95:22 96:15 97:2,7 98:1,11 102:14 114:22 152:2 160:10 160:16,21,23 161:8,12 162:17 165:18 165:19 166:14 166:16,17,21 167:19,22 168:6,12
thank 70:5 105:4 168:16
Thanks 84:13
thereto 172:16
they'd 59:3 67:22
thing 17:6 44:14 66:18 74:17 103:8 121:6 127:7 134:9 146:4
things 10:12 16:20 17:8,12 17:21 38:9 45:2,24 49:10 52:5 55:2 62:12 63:12,13 65:18 66:15 91:25 102:25 116:24 117:19 117:19 120:23 139:24 148:14 165:12
think 5:23 7:23 10:17 15:20 18:18 23:25 27:13 28:5 31:9,18 33:8 33:10 34:9,22 34:24 35:21 39:9 40:12 41:5,9 42:4 47:12,14 56:15 56:16,24 58:16 58:18 59:2 60:2 62:22 64:8,21 66:4 66:25 67:22 71:8,17,25 72:20 73:11,17 75:10,12 76:7 77:11 79:18 80:20 81:3,4 81:22 87:5,14 88:2,23 90:11 90:12,16 91:8 92:6 95:9,14 95:19 96:5,11 96:11 97:11,21 97:21,21,22 98:16 99:3 101:10 104:17 104:18 106:4 106:19 108:13 109:12 110:14 111:15,22 112:4,5 116:9 116:18 120:1 121:9,13 124:4 124:20 126:11 127:9 129:7,14 129:17 130:24 132:17 134:15 135:12 137:5 137:16,23 138:24 139:1 140:3,5 141:14 141:23 142:1,2 142:3,4,4,6,15 142:18 144:17 144:23 145:4 145:11,13 146:14,17,18 147:4,14,15,15 148:6,18 149:12 150:2 150:17 153:10 157:11 163:7

163:18,22 165:7 166:23 167:6,8,18 168:1
thinking 36:19 47:6 50:19 59:9 78:2 103:12 124:5 145:3
third 8:15 27:17 43:21 51:14 54:4 57:2,25 58:11,21,23 59:1,19,21 60:12 61:17 63:17 65:17,25 66:22 67:11,14 104:12,20 107:9 108:7 111:18 128:23 154:22,23 160:18 164:4
third-party 67:12 159:13 160:13 166:12
thought 34:12 35:22 66:2 102:24 117:5,6 127:18 138:23 143:16 146:21 160:23 162:3
three 25:18 36:12,16 67:21 82:8 98:25 99:5 122:21 123:1 142:18
three-step 112:11,17,23
time 1:13,14 6:18 7:9,9,14 7:16 13:24 14:4,8,22 15:13 16:12,12 19:13,15,20,24 20:2,9,16,22 20:25 29:5,7 36:6 38:24 39:4,15 41:10 74:14 88:15 119:12 120:1 120:16 121:5 124:1 137:8 138:11,15 145:2 146:15 146:23 147:6 147:13
times 8:13 51:16 106:21 122:14 132:12 145:25
tiny 70:7
title 113:24
titled 30:4
today 94:25 119:12 141:17 141:21
toggle 19:14
told 5:14 16:16 17:11 46:3 61:24 73:6,7 85:11 99:16 110:14 118:17 146:14 153:10 167:2
ton 143:1
toolbox 143:1 147:2,5
Toole 150:10,16 150:17
tools 143:3
top 76:12 120:23
topic 19:11,13 19:18 20:12 27:15,17 29:4 29:5 37:15,19 40:1 41:10 45:16 47:4,12 47:19 71:9 74:20 76:23 85:3 88:17 91:21 93:4 95:11 96:4 120:2 126:24 127:4 128:16 134:25 136:1,2 156:3 159:24 165:2
topics 5:2,3,8,17 5:18 6:4,6,9 19:5 27:13,15 47:13 74:22 91:20 93:22 95:11 119:18 120:5,11 126:8 126:23 168:18
total 98:16
touched 70:17
tour 13:23
track 77:14
Tractor 1:2 4:15 14:4 16:14,15 26:25 43:11,15 52:16 56:17 60:7 63:11,14 63:16,19 64:19 64:25 66:21 67:6 77:2 78:24 79:15 80:4 83:17,21 85:6,22,25 86:6,12,21,25 87:21 88:9 89:23 90:23 91:11 92:19,24 95:21 101:8,15 101:18,19 102:14 103:22 104:10,24 105:2,21 109:8 109:8,9 114:11 114:16,18,21 115:1,2,13,19 116:1 119:16 125:13,15 135:1,17 152:3 152:18 153:6 153:18,19 154:3,8 162:18 162:19 165:17 166:8,20,21 167:8 168:1,10
training 13:1 41:14 45:15,21 46:7 142:13,14
transaction 59:10 60:22 65:6,7 66:11 83:7
transactions 17:15 71:3 79:1 81:24,25 140:1 154:20 162:1 164:13 166:2 167:20 168:11
transcript 170:5 171:5
transcription 170:6 171:6
transfer 51:10 51:21 61:14,15 70:16,19 71:5 71:20 73:13 95:10 111:10
transferring 50:13
transpired 47:10 74:5 99:12 168:25
travel 125:7
traveled 125:5
treated 34:14 42:16 118:5
trial 8:23 116:25 123:2,4
tried 100:19
trouble 31:13
true 57:23,23 65:5 170:5 171:5
truly 50:11 51:12 65:9
try 6:21,25 7:4 23:15 24:16,18 38:20 55:23 70:12 84:19 120:25 121:2 127:4,22 148:13
trying 34:16 35:7 39:12 44:10 47:21 50:15 54:13 60:22,24 61:7 63:24 68:18,25 77:4,20 82:10 105:9 107:16 107:21 108:9 108:11 111:4 111:14 116:24 117:2 121:4,20 127:19 129:7 141:14 146:13 163:25 166:3
TSC 3:19,21 43:19 66:2 77:17 81:14 85:18 93:13 96:14 97:2,7 98:1,1,1 160:10,15 161:8,12,12 162:17,22 167:14,21,22
TSC's 79:22 153:23
turn 30:3
Twentieth 151:8
twice 121:10
two 11:18 13:8,9 36:3 81:24 91:24 93:4 112:19,22,22 122:21 123:1 123:14,18 141:6,16

142:17 148:16 148:21,24 149:14 155:3 156:11 157:15 158:2,5,13,15 158:17,23,24 159:5
two-and-a-half 124:15
type 17:6,15 33:2 35:7 42:11 43:16 53:3,14 57:7 58:22 62:12,22 63:3 66:11 74:2 86:18 97:19 129:20
types 40:2,7,19 41:6 42:11 46:19 49:9 52:24 53:16 68:20,21 146:11
typewriting 172:11

U

UDITPA 151:15
uh-huh 28:4 41:22 50:15 58:5 68:8 92:13 114:13 116:20
uh-huhs 7:7
ultimate 116:7
ultimately 17:1
uncommon 52:18
underneath 12:17 42:10
undersigned 170:3 171:3
understand 6:8 6:18 8:4 14:13 15:19 24:21 32:2 33:11 35:8,14 39:11 40:12 56:7 61:12 63:12 64:17,17 66:3 67:15 80:2 84:9 86:4 95:24 119:19 119:25 120:3 120:16 121:14 142:12 154:7 154:10 165:7 165:10,12,13
understanding 5:1 24:3 31:21 35:20 62:20 68:17 96:13 97:24 98:14 115:20,25 128:18 131:8 133:5 136:6,8 141:10
understatement 36:11
understood 27:8 34:24 53:21 71:10 81:4 83:2 88:23 138:8
uniform 41:18
uniformly 151:22 153:7
unitary 26:2,7 26:11 27:20 28:17 29:1,16 30:6,12,16 32:12 33:1 35:11 36:14 40:5,8 41:13 41:14,25 42:6 42:8,20 44:20 45:6,9,12 49:2 49:5,8,15,17 49:19,21 50:3 68:12,16 69:7 72:25 73:8 75:7,13,17 76:5 78:21,22 79:7,22 82:20 83:3,12 85:16 87:15 88:21 89:12,17 90:3 90:7,18,24 91:4,9,12,13 92:7,15,19 93:2 95:6 97:18,21,25 99:22 100:2,3 100:6,13 101:23,24 105:19,23 107:13,22,24 109:24 125:23 126:1 128:1,2 128:7,13,14 129:12,13,15 129:17,18,19 130:1,6,9,19 130:20,23 131:1,3,5,18 131:19 132:1,4 132:5,11,22 133:9,12 135:22 136:16 137:21 140:6 142:1,5,18,22 143:7,25 147:19 151:25 152:3,5,7,19 152:20,21,22 153:4,5,7,14 153:18,20,22 155:20 156:6,8 156:12,20,24 157:5,13,16,21 158:18 159:25 161:16,17,24 163:20 164:25 166:1
University 9:9 123:23
unrelated 58:7 60:3 62:7 65:17,22
update 94:21
updated 147:7
uptake 165:11
use 25:1,20,22 26:15,18 27:19 29:1 30:17 33:11 42:13 44:19 55:25 56:5 61:21 68:14 70:24 71:2 82:14 89:13 100:3,4 100:14 115:13 124:20 127:21 129:14 135:22 136:12 138:9 138:13,17,20 138:22,25 143:11 144:19 144:20 145:16 148:2 167:23
uses 151:13,18
usually 42:23 58:15 140:9 163:6
utilized 138:5
utilizing 136:16

V

v 3:15 25:12 29:14 30:3
V(A) 42:8
value 42:25 54:9 55:14,17,23
variables 129:7
varied 12:19
various 14:17,20 42:19
version 35:25
versus 6:23,24 7:7 8:5 15:4,17 18:7 19:6 20:15,19,21 27:10 34:3 47:16 80:14 81:12 92:3 115:1,19
vertically-inte... 78:21
view 26:9,13,19 27:2 32:21 34:25 47:3 102:6 103:10 104:7 112:16 129:11,14 133:15 134:17 134:18
viewed 38:22 76:4 114:10 167:14
viewing 92:14 101:21 102:11
views 26:9 35:3 128:1
violated 165:6,9 165:21 168:8 168:13
violates 161:15 161:23 164:23
visit 17:4
voice 78:5
vs 1:4

W

wait 7:1 70:7
waiting 121:1,2
walk 9:5,16 16:9
walked 112:10
want 21:8 23:20 23:21 24:2 29:23 37:14,17 37:22 38:7 40:10 51:12 65:6 76:19 83:2 84:21 85:13 99:18,19

100:10 117:15 126:17 127:1 134:15 138:25 163:13 165:1 169:5
wanted 30:22 31:1 33:4,16 35:6 105:8,13 105:15 121:6 128:17 133:2 149:10
wanting 31:24 35:8 37:2,16
wants 156:19,19
Ward 13:17 148:18 149:2 150:1
wasn't 18:13 34:1 53:5 84:14 98:22,22 103:16 108:4 127:16 129:19 137:16 138:3 138:15 145:14
water's 42:13,15
way 18:12 30:10 38:8 73:4,5,7 76:6 98:12 104:19 105:14 106:8 109:18 109:21 125:13 130:11,21 132:9 148:19 152:5,9 154:13 155:17,23 156:1 157:4 158:17 161:6 165:7,13
ways 137:24
we'll 7:3,22 19:12 25:6 27:14 29:4 36:7 70:12 76:20 140:12 143:7 144:10
we're 4:10,13 8:6 36:4 38:9 47:19 54:9,13 55:3,3 56:1 59:11,24,25 62:11,22 66:23 66:23 70:25 77:13 82:20 83:5,11,11 94:14 100:3 101:24 102:9 107:10,11 108:18,21,23 119:12 122:4 127:10 131:18 132:4,5,6 151:14
we've 24:20,21 25:6 27:21 32:19 38:21 40:13 41:20 44:20 45:25 66:14 70:16 79:18 95:9,10 117:7 122:1 165:14
Wednesday 1:12
weigh 43:22 51:11,22 52:1 58:3 60:4
weighed 51:20
weighs 43:24 52:12
weird 161:6
went 15:9,9,15 16:12,17,18 48:18 75:23 82:20 83:3 96:23 97:19 99:10 100:18 144:12
weren't 111:9
West 20:19,21
willing 14:2 65:16
wire 50:12 51:9 51:21
withholding 11:2
witness 6:7 34:9 74:1 113:1,14 123:9 127:12 172:7,9
wondering 66:6 80:7
Wooten 2:8 3:5 5:13,25 15:25 34:8 37:21 38:1,6 47:9 48:15 73:24 84:8,12,16 96:21 99:9 100:22,25 101:3 112:2 116:9 123:7 127:10 128:21 129:2 169:3,7
word 128:23 132:1
worded 95:16,17 95:18
words 62:1,18 84:3 87:14 102:15 103:14
work 12:22 14:1 17:6 24:5 95:3 106:7 108:22 110:3 117:12 118:20 125:19 152:13
working 11:6,7 89:8 116:16 117:1 124:16 124:19
works 4:8 90:15 152:6
worldwide 42:14 42:14
worries 78:6
wouldn't 31:12 44:3 59:2 69:17 89:24 104:12,13 106:8 129:21 133:10 138:25 152:4,23 157:6 157:14 163:22
write 166:3,4
write-up 17:8,9 17:13,25 18:3 138:1 148:5
writing 17:20,21 31:13 46:6,11 136:18
written 37:22,24 38:4 44:17 45:2 46:7 136:7,11 142:8 144:18 145:1,6
wrong 35:23,25 90:12

X

X 3:1

Y

y'all 60:17 61:4 61:13 67:15 74:20 75:20 76:4 91:19 96:19 111:17 168:20 169:5
y'all's 136:7
yeah 13:25 16:1 18:20 32:16 38:5,19 47:9 48:17 55:12 59:22 64:15 66:8,16 74:4 76:16,21 78:3 80:11 82:11 83:5 99:6,20 99:24 102:9,9 103:14 106:4 107:9,15 109:3 109:6 112:19 118:17 121:14 124:18 131:5 135:13 145:7 145:22 150:20 161:5
year 9:10 32:11 32:15 149:5,23 156:16
years 8:21,25 11:18 36:12,16 42:18 124:15 135:9,10,11
yeses 7:6

Z

zero 158:12 159:14
Zone 123:9
Zoom 1:9 6:23

0

1

1 3:13 4:20,21 5:8 21:20 24:10,13,20 25:7,16 26:20 151:17,20
10 5:9 70:15
10-K 44:3 53:12 53:13 55:2,3 55:22,23 56:18 56:23 57:1 67:3 78:4,10 143:16 163:6 164:5,9,14
10-Ks 117:17
10/19 149:5
10:11 1:13
100 133:11 151:23 152:5 152:10,14,17 152:25 153:1,6 153:13,17,24

155:24
11 5:10 29:15 30:4 73:17 118:10
112 3:5
116 3:6
119 3:8
12 73:17 96:11 109:14
12's 118:11
12-6-2320 3:14 21:3,8 126:15 140:14
12-6-2320(A) 20:14 40:6 88:19
12/31/08 99:3
12/31/2010 99:3
12th 19:21 35:19 36:1
13 5:11 42:10 68:6 73:17 105:20,22 106:3,6,12 109:14,14 118:11 156:3
14 5:9 42:10 68:6 73:18 74:7 135:12 137:5 150:5
14's 118:12
14th 35:21,22
15 39:16 42:11 68:7 76:24 90:17 118:12 126:3
15-2 46:14
15-41 3:19 77:17
15-5 3:17 23:17 23:18 24:13,17 25:21 29:6,14 29:18,20 31:3 34:13 35:1 36:10 38:15,25 39:21 41:21,23 42:1,4 44:21 46:13 70:23 75:10,19 76:6 89:19 98:7,12 99:21 110:2 133:1,8 136:7 140:15 142:10 144:25 150:21
15-5's 24:18
15,000 32:19
150 153:2
151 2:4
16 85:3 90:22 114:4 118:14 135:12 150:5 150:12
17 88:17
172 3:9
18 5:9 11:5 12:2 90:1
19 5:11 137:6 159:24
19-ALJ-17-04... 1:5
1975 124:1
1978 124:17,20
1988 9:11
1989 9:19,20
1995 9:20,21,22 9:24
1st 19:21

2

2 3:14 5:10 21:2 23:4 24:21,23 25:8,16 26:20 27:15 110:10 113:24,24 151:14
20 5:11 12:2 32:14,15 165:2
2001 80:1,5,14 80:16 81:8
2005 9:24
2006 9:25 10:1 96:9,13,20
2010 36:25 39:17 142:16
2012 96:10 97:9
2014 19:21 20:4 105:15,18,21 137:6 145:2 150:12
2015 35:19 36:1 36:8,18
2017 10:5
2018 10:2,4,5,6 10:14,23 11:11 12:14 14:19 93:10
2019 19:22 20:5 124:24 125:3 137:6 141:10 142:20 145:2 149:16
2020 10:17,18 11:10,21,21 12:1
2022 1:12 11:19
2031 172:25
206,000 98:20
21 3:14 5:9 93:4 149:5
22 95:9
23 5:9 172:25
2320 34:14 113:8
2320(A)(4) 28:2 33:17 89:20
25 3:16
29 3:17
29210 2:9
29401 2:5

3

3 3:15 5:8 24:24 25:10,11,16 26:1,5,10,13 26:20 114:7,14 151:17 154:14
3:03 1:14 169:9
30 144:5,5,8
30(b)(6) 1:9 3:13 4:14,21 16:3 101:1,4 119:15 119:21 120:11 126:8
300-A 2:9
3rd 93:10

4

4 3:4,13,17 5:10 29:4,20 58:6 62:10 105:17 105:22 106:3 133:16 134:25 150:24
458,000 98:16
482 55:25 56:2,5 59:11 61:20,21 62:15 70:24 72:5,11,20 73:1,13 140:2 140:11
482s 61:6 73:4 117:17

5

5 1:12 3:18 5:8 29:5 62:19 77:16 112:4
50 133:10

6

6 3:20 40:1 48:22 65:15 93:12 115:2,8

7

7 5:9 29:15 30:3 41:10 68:4 78:9 90:10 117:20
77 3:19

8

8 5:10 77:24 136:1
8's 118:4
8-14 3:21 93:13
803)898-1826 2:10
843)534-4221 2:5

9

9 5:9 47:12,19 99:20 105:24 106:13,14
90s 124:5
93 3:21
95 124:21
96 124:21