IT 19-0004-PLR
(Alternative Apportionment) Alternative Method of Apportionment

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

December 17, 2019

Dear XXX:

This is in response to your letter dated May 3, 2019 in which you request a Private Letter Ruling on behalf of COMPANY1. Your request for a Private Letter Ruling includes the information required under paragraphs 1 through 8 of subsection (b) of 2 Ill. Adm. Code 1200.110. The Private Letter Ruling will bind the Department only with respect to COMPANY1 for the issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing the expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that COMPANY1 and/or any related taxpayer(s) is not currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

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

> The ruling is requested for tax year ended on December 31, 20##.
>
> COMPANY1 is a limited liability company and is treated as a partnership for federal income and Illinois personal property replacement income tax ("Income Tax") purposes. COMPANY1 has a calendar year ending December 31st.
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> Statement of facts
> COMPANY1 is a privately held biopharmaceutical company headquartered in CITY1, STATE1. COMPANY1 is a regarded entity treated as a partnership for federal and state Income Tax purposes. COMPANY1 has a wholly owned subsidiary, COMPANY1 HOLDINGS. COMPANY1 HOLDINGS is a disregarded LLC for federal and state Income Tax purposes.
>
> COMPANY2 was founded in 20## and headquartered in CITY1, STATE1 with additional locations in CITY2, CITY3, STATE2, and STATE3. From inception through February 20##, COMPANY2's core business was the manufacturing, distribution and retail sale of approved pharmaceutical products to pharmaceutical wholesalers. In February 20##, COMPANY2 divested the intellectual property associated with the majority of its approved pharmaceutical products and devoted its efforts on advancing its

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

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

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

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

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

COMPANY1 excluded the gain from sale of the intangible and personal property on its 20## Illinois partnership return as an occasional sale. The sale of the intangibles could also be viewed as a sale of an intangible covered under Illinois Income Tax Act ("IITA") Section 304(a)(3)(B-1 and B-2) and the proceeds from the sale of the intangibles would also be excluded from the Illinois sales factor numerator and denominator. COMPANY1's Illinois apportionment factor for the 20## tax year was %%%.

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

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

Rulings Requested
COMPANY1 requests the use of an alternative method relating to the two Earn-Out payments that were received in 20##. COMPANY1 also requests the use of an alternative apportionment method regarding the payment that they received from the sale of the intangible rights to future Earn-Out payments. The contractual rights to the Earn-Out payments relate to the same pharmaceutical sale that occurred in 20##.

In the event that COMPANY1 receives future payments relating to the milestone payment or Earn-Out payments from rights they had retained, COMPANY1 requests the use of the same alternative apportionment to be applied to these payments.

Discussion
As previously stated, there are four types of receipts that COMPANY1 earned during 20##. They earn interest from cash on deposit maintained

to service tax obligations and imputed interest on Earn-Out payments received during the year. They earned and received two Earn-Out payments during the year. The final receipt is the income that was earned when they sold the rights to the future Earn-Out payments.

Interest income sourcing

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

COMPANY1 received two Earn-Out payments during 20##. Pursuant to Internal Revenue Code Section 483, a portion of the Earn-Out payments will be deemed interest on certain deferred payments. Again it is presumed that COMPANY1 is not a dealer in the item of interest and the sourcing of the interest would be governed by IITA Section 304(a)(3)(C-5)(iii)(b). Based on this sourcing provision, 100% of the interest income on deferred payments would be sourced to Illinois, the commercial domicile of COMPANY1.

Earn-Out Payment Income Sourcing

COMPANY1 distributes PRODUCT3 through a specialty pharmacy model under which COMPANY1 sells PRODUCT3 to two specialty pharmacies, at which point its earnings process is complete. COMPANY1 is an SEC-registrant and its external reported product sales are based on its sales to these specialty pharmacies. COMPANY1's Earn-Out payments are based on COMPANY1's sale of product to the specialty pharmacies. From a physical flow of goods perspective, COMPANY1 houses its inventory at a third-party logistics provider ("COMPANY5") located in STATE4. COMPANY1 then sells inventory primarily to one specialty pharmacy located in STATE5, with a small amount sold to a different specialty pharmacy located in STATE6.

In COMPANY1's original sale of the drug PRODUCT3 to COMPANY1, the sale included the trademarks, tradenames, patents and other similar intangible rights. The Earn-Out payments relate to these same rights and the sourcing of these payments would be governed by IITA Section 304(a)(3)(B-1 and B-2).

IITA Section 304(a)(3)(B-2):

> Gross receipts from the license, sale, or other disposition of patents, copyrights, trademarks, and similar items of intangible personal property, other than gross receipts governed by paragraph (B-7) of this item (3), may be included in the numerator or denominator of the sales factor only if gross receipts from licenses, sales, or other disposition of such items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the 2 immediately preceding tax years; provided that, when a taxpayer is a member of a unitary business group, such determination shall be made on the basis of the gross receipts of the entire unitary business group.

The income from the Earn-Out payments will not meet the "more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the two immediately preceding tax years." As such the proceeds from the receipt of the Earn-Out payments will be excluded from COMPANY1's Illinois sales factor apportionment, both numerator and denominator.

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

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

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

> When gross receipts arise from an incidental or occasional sale of assets used in the regular course of the person's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded. Gross receipts from an incidental or occasional sale of stock in a subsidiary will also be excluded. Exclusion of these gross

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

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

Assuming that the net gain from the sale of the Earn-Out rights and the Earn-Out payments are both excluded from the Illinois sales factor numerator and denominator, Illinois would apportion all income earned in

20## based on COMPANY1's interest received. In essence, without the use of an alternative apportionment method, Illinois would source 100% of all of COMPANY1's income to Illinois.

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

IITA Section 304(f) Alternative allocation provides:

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

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

> A taxpayer petition for use of a separate accounting method or any other alternative apportionment method will not be considered by the Director unless such petition has been timely filed. A taxpayer who petitions the Director for an alternative apportionment formula does so subject to the Department's right to verify, by audit of the taxpayer's return and supporting books and records within the applicable statute of limitations, the facts submitted as the basis of the petition. A petition for alternative allocation or apportionment is timely filed if the petition is filed:
>
> (e)(1) 120 days prior to the date of the tax return (including extensions) for which permission to use such alternative method is sought. A taxpayer who does not petition more than 120 days prior to the due date of the original return must file their return and pay tax according to the statutorily approved apportionment method.

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

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

We are requesting under IITA Section 304(f) and 86 Ill. Admin. Code Section 100.3390(e)(1) the use of an alternative apportionment method because we believe that the application of the required statutory formula for apportionment will lead to a grossly distorted result. We would like to propose three apportionment options for the tax year ending December 31, 20## to source the proceeds for the Earn-Out payments received as well as the proceeds for the rights to the future Earn-Out payments:

1) We will use the Illinois apportionment percentage that COMPANY1 had in Illinois for 20##. This percentage was %%%. This is the year the COMPANY1 sold the drug PRODUCT3 to a third party pharmaceutical. The Earn-Out payments ultimately relate to this initial sale.

2) We will use the average Illinois apportionment percentage that COMPANY1 had in Illinois over the last ## years while it developed the drug PRODUCT3. This percentage was %%%,

> 3) We will use the average Illinois apportionment percentage that COMPANY1 had in Illinois since it first transacted business in Illinois back in 20##. This percentage was %%%.
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> We believe that the first proposed option of apportionment would be most appropriate because the 20## Earn-Out payments and the proceeds for the future Earn-Out payments all relate to the original sale of PRODUCT3 back to 20##. However, we would accept either the second or third options if the Department believes that these apportionment methods are more representative of COMPANY1's activities in Illinois.
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> Should the Department grant the Company's request for the use of an alternative apportionment for 20##, the Company would be interested in applying the same alternative apportionment methodology for future receipts attributable to the Milestone Event or Earn-Outs that the Company retained.

In correspondence provided subsequent to your filing, you represented that in 20##, the amount of $$$ of interest income was included in Taxpayer's base income, none of which was attributable to imputed interest.

RULING

Under Section 304(h) of the Illinois Income Tax Act ("IITA" 35 ILCS 5/304(h)), for taxable years ending on and after December 31, 2000, the apportionment factor for taxpayers apportioning business income under Section 304(a) is equal to the sales factor. The sales factor is defined under Section 304(a)(3)(A) as follows:

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

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

IITA Section 304(f) provides:

> If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not, for taxable years ending before December 31, 2008, fairly represent the extent of a person's business activity in this State, or, for taxable years ending on or after December 31, 2008, fairly represent the market for the person's goods, services, or other sources of business income, the person may petition for, or the Director

> may, without a petition, permit or require, in respect of all or any part of the person's business activity, if reasonable:
>
> (1) Separate accounting;
> (2) The exclusion of any one or more factors;
> (3) The inclusion of one or more additional factors which will fairly represent the person's business activities or market in this State; or
> (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Pursuant to this section, the Department promulgated Regulations Section 100.3380, which states in relevant part:

> The Director has determined that, in the instances described in this Section, the apportionment provisions provided in subsections (a) through (e) and (h) of IITA Section 304 do not fairly represent the extent of a person's business activity within Illinois.
>
> …
>
> When gross receipts arise from an incidental or occasional sale of assets used in the regular course of the person's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded. Gross receipts from an incidental or occasional sale of stock in a subsidiary will also be excluded. Exclusion of these gross receipts from the sales factor is appropriate for several reasons, more than one of which may apply to a particular sale, including:
> A) incidental or occasional sales are not made in the market for the person's goods, services or other ordinary sources of business income;
> B) to the extent that gains realized on the sale of assets used in a taxpayer's business are comprised of recapture of depreciation deductions, the economic income of the taxpayer was understated in the years in which those deductions were taken. The recapture gains that reflect a correction of that understatement should be allocated using a method approximating the factors that were used in apportioning the deductions. If the business otherwise remains unchanged, including the gross receipts from the sale in the sales factor numerator of the state in which the assets were located would allocate a disproportionate amount of the recapture gains to that state compared to how the deductions being recaptured were allocated;
> C) to the extent the gain on the sale is attributable to goodwill or similar intangibles representing the value of customer relationships, including the gross receipts from the sale in the sales factor will not reflect the market for the taxpayer's goods, services or other ordinary sources of business

income to the extent the sourcing of the receipts from that sale differs from the sales factor computed without regard to that sale; and
D) in the case of sales of assets that are made in connection with a partial or complete withdrawal from the market in the state in which the assets are located, including the gross receipts from those sales in the sales factor would increase the business income apportioned to that state when the taxpayer's market in that state has decreased.

Your letter represents that on March ##, 20## COMPANY1 HOLDINGS (hereinafter “Taxpayer”)[1] sold substantially all of the assets used in its trade or business, including the rights to PRODUCT3 and all associated assets, to a third-party purchaser for an immediate cash payment plus the third-party purchaser’s obligation to make certain contingent payments in future taxable years. Based on the facts as described in your letter, the March ##, 20## asset sale constitutes an incidental or occasional sale of assets used in the regular course of business pursuant to Regulations Section 100.3380. As such, the gross receipts from such sale must be excluded from the Taxpayer’s sales factor.[2]

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

Where an occasional sale of assets is reported under the installment method, the portion of the contract price received during the taxable year must be excluded from the sales factor under Regulations Section 100.3380. In addition, under Internal Revenue Code Section 453B and Treasury Regulations Section 1.453-9(a), the entire amount of gain or loss on the sale of an installment obligation is recognized in the taxable year of sale and is considered as resulting from the sale or exchange of the property in respect of which the installment obligation

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[1] We assume for purposes of this ruling that Taxpayer’s name change qualified as a reorganization under IRC Section 368(a)(1)(F).
[2] Your letter indicates that the gross receipts from the March ##, 20## sale, to the extent allocable to PRODUCT3 and associated intellectual property rights, are excluded from the sales factor under IITA Section 304(a)(3)(B-2). Even assuming that such receipts would not be excluded from the sale factor under IITA Section 304(a)(3)((B-2), such receipts are excluded from the sales factor under Regulations Section 100.3380. In addition, Regulations Section 100.3380 applies to exclude from the sales factor gross receipts from the sale allocable to the bottling machinery and equipment and business goodwill. The analysis set forth herein is the same whether the gross receipts are excluded from the sales factor under either IITA 304(a)(3)(B-2) or Department Regulations Section 100.3380.

was received. Accordingly, where the taxpayer sells an installment obligation received by the taxpayer in connection with an occasional or occasional sale of assets, gross receipts from the sale of the installment obligation must likewise be excluded from the sales factor pursuant to Department Regulations Section 100.3380.

Applying the provisions of Department Regulations Section 100.3380 to the facts set forth in your letter, Taxpayer must exclude from its sales factor the $$$ of Earn-Out payments received in 20##, as well as the $$$ received in 20## from its sale of the Earn-Out rights. Similarly, any Earn-Out payments received in future taxable years (including the milestone payment) must be excluded from Taxpayer's sales factor.

As indicated above, under Treasury Regulations Section 15a.453-1, the contract price does not include interest, whether stated or unstated. You have represented that Taxpayer did not recognize interest on the installment obligation in 20##, but that imputed interest may be taken into account in subsequent taxable years as amounts are paid under the contingent payment obligation.

Your letter indicates that, other than gross receipts received on the installment obligation, the Taxpayer's only source of gross receipts consists of interest income from cash deposits maintained in order to service tax obligations. As mentioned above, you indicate that the Taxpayer sold substantially all of its assets on March ##, 20##, and thereafter began to wind down its business, including eliminating all but ## employees as of June 20##, and all employees as of September ##, 20##. As a result, most of the interest income taken into account in 20## accrued after the Taxpayer had ceased its regular business activities. In this case, the vast majority of the Taxpayer's base income for 20## derives from its March ##, 20## asset sale. However, under IITA Section 304(a), all of that income is apportioned based on a relatively small amount of gross receipts from interest income earned on deposits and accruing after the taxpayer had ceased to conduct its regular business activities. Based on the facts represented, the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) of Section 304 do not fairly represent the market for Taxpayer's goods, services, or other sources of business income. Therefore, an alternative apportionment method is appropriate.

Your letter proposes an alternative apportionment method for the 20## taxable year in which Taxpayer would use its Illinois apportionment percentage for the 20## taxable year to source the proceeds from the Earn-Out payments as well as the proceeds from the sale of the rights to future Earn-Out payments. The apportionment percentage for the 20## taxable year represents the apportionment that would have applied to the entire gain from the sale of PRODUCT3 and associated assets if that gain was recognized in the year realized. You may compute Taxpayer's apportionment factor for its 20## taxable year by including in the numerator of the sales factor the percentage of the net gain taken into account on payments received in 20## under the installment obligation, plus the net gain taken into account from the sale of the installment obligation, equal to Taxpayer's 20## Illinois apportionment factor (which you represent to be %%%). The entire net gain should be included in the denominator. You should include 100% of the interest income taken into account in 20## (including imputed interest taken into account, if any) in the numerator of the sales factor (with the same amount included in the denominator). You may use the same methodology for future taxable years with respect to any Earn-Out payments (including the Milestone payment) received, and including 100% of the interest income taken into account in future taxable years (including imputed interest) in the numerator of the sales factor.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

Sincerely,

Brian L. Stocker
Chairman, PLR Committee (Income Tax)