IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

INTERCONTINENTAL BRANDS LLC AS SUCCESSOR IN INTEREST TO KRAFT FOODS GLOBAL BRANDS, INC.

Plaintiff,

v. **Case No.** 2017 CA 000277

STATE OF FLORIDA, DEPARTMENT OF REVENUE,

Defendant.

_____/

COMPLAINT

Plaintiff, Intercontinental Brands LLC as successor in interest to Kraft Foods Global Brands, Inc. ("Plaintiff"), pursuant to Chapter 86 and Section 72.011, Florida Statutes, sues Defendant, the State of Florida, Department of Revenue, ("Defendant"), and alleges:

PARTIES

1. During the years ended December 27, 2008 through October 1, 2012 ("Periods at Issue"), Plaintiff was a corporation organized under the laws of Delaware, with its commercial domicile located in Illinois. For purposes of this proceeding, Plaintiff's address is that of the undersigned counsel.

2. Defendant is an agency of the State of Florida with the responsibility for the administration and enforcement of Florida's state tax laws, including those dealing with Florida's corporate income tax ("CIT") as provided in Chapter 220, Florida Statutes. Defendant's address for the purpose of this proceeding is the General Counsel's Office, 2450 Shumard Oaks Boulevard, Building 1, Tallahassee, Florida 32311.

VENUE AND JURISDICTION

3. On or about September 2, 2014, Defendant issued a Notice of Proposed Assessment ("Assessment") to Defendant, asserting CIT in the amount of $8,546,862.00, penalty in the amount of $4,273,430.00, and interest in the amount of $2,067,968.71 calculated through September 2, 2014 and daily interest thereafter until paid for the Periods at Issue. A copy of the Assessment is attached hereto as Exhibit A.

4. On October 28, 2014, pursuant to Section 213.21(1) and Rule 12-6.003(1) of the Florida Administrative Code, Plaintiff filed an Informal Written Protest of the Assessment with the Defendant.

5. On or about December 23, 2016, the Defendant issued a Notice of Decision ("Notice") to Plaintiff, dated December 23, 2016, sustaining the Assessment in full and asserting a balance due of $16,268,452.56. A copy of the Notice of Decision is attached hereto as Exhibit B.

6. Pursuant to Section 72.011(2)(b)1, Florida Statutes, and Rule 12-6.003(3)(b) of the Florida Administrative Code, the Assessment became final on December 23, 2016. Therefore, the Assessment is subject to the jurisdiction of the Circuit Court. § 72.011(1)(a), Fla. Stat.

7. Plaintiff sues the Defendant and contests the entire amount of the Assessment of CIT, penalty and associated interest asserted as due.

8. Plaintiff has complied with all conditions precedent to bringing this action, including all applicable registration requirements contained in section 72.011, Florida Statutes. Pursuant to section 72.011(3)(b)2, Florida Statutes, simultaneously herewith, Plaintiff has filed a Motion for Alternative Security with the Court, requesting that alternative security be set to ensure payment of CIT, penalty and associated interest asserted as due in the Assessment should this challenge be unsuccessful. A copy of the simultaneously filed Motion for Alternative Security is attached

hereto as Exhibit C. Although Plaintiff has previously requested a bond waiver from Defendant, no response has been received as of the date of this Complaint.

9. The Court has jurisdiction of this action pursuant to sections 68.01, 72.011(1) and 86.011, Florida Statutes, and article V, section 20(c)(3) of the Florida Constitution. Venue is proper in Leon County, Florida, pursuant to section 72.011(4), Florida Statutes.

10. Plaintiff is uncertain of its rights and duties under chapter 220, Florida Statutes, and seeks a judicial declaration thereof. Without such a declaration, Plaintiff will be subjected to CIT, penalty and interest which it believes to be invalid and unlawful. Defendant continues to maintain that all amounts of CIT, penalty and interest asserted as due in the Assessment are lawful and has refused to withdraw the same.

FACTS[1]

11. Plaintiff owned numerous patents, trademarks, trade names, trade secrets, process technologies, product technologies and other intellectual property (collectively, the "Intellectual Property"), which it protected, managed and promoted.

12. Plaintiff licensed the Intellectual Property to related and unrelated parties.

13. In addition, Plaintiff performed a wide variety of research and development and engineering activities in connection with its Intellectual Property.

14. To perform these activities, Plaintiff maintained offices and a research and development facility at its headquarters in Illinois.

15. Plaintiff also conducted business operations in other states, including New Jersey, New York and Wisconsin.

16. Plaintiff employed over 600 individuals and paid substantial wages to these individuals.

[1] The facts pertain to the Periods at Issue unless the context indicates otherwise.

17. Plaintiff had no offices, employees, or operations located in Florida.

18. Plaintiff had no real property or tangible personal property located in Florida.

19. Plaintiff did not negotiate or execute any contracts or licensing agreements in Florida.

20. Plaintiff did not conduct any business in Florida.

21. Plaintiff did not earn or receive income in Florida.

22. Plaintiff was not a resident or citizen of Florida.

23. No portion of Plaintiff's business consisted of dealing in or with the production, exploration, or development of minerals.

24. The liabilities asserted as due in the Assessment arise from Defendant's claim that Plaintiff conducted business in Florida and had Constitutional nexus with Florida, based on Plaintiff's licensing of Intellectual Property to licensees doing business in Florida, and Plaintiff's receipt of royalties from those licensees.

25. Further, the liabilities asserted as due in the Assessment arise from Defendant's apportionment of Plaintiff's income. In apportioning Plaintiff's income to Florida, Defendant computed Plaintiff's sales factor based on the Florida sales factor of a related entity from whom Plaintiff received royalties.

STATUTES AND RULES

26. Chapter 220, Florida Statutes, imposes the CIT on entities conducting business in Florida. That chapter sets forth the framework for the imposition and calculation of the CIT.

27. Section 220.11(1), Florida Statutes, provides that a tax measured by net income is imposed on every taxpayer for each taxable year for the privilege of conducting business, earning or receiving income in Florida, or being a resident or citizen of Florida.

28. Rule 12C-1.011(1)(p)1 of the Florida Administrative Code provides that conducting business, earning or receiving income in Florida, or being a resident or citizen of Florida include selling or licensing the use of intangible property in Florida. The Florida Administrative Code provides, as an example, that licensing the use of a trade name, trademark or patent to a business entity located in Florida will subject a corporation to the CIT. Fla. Admin. Code R. 12C-1.011(1)(p)1.

29. Section 220.02(5), Florida Statutes, provides that it is the intent of the Legislature to exclude from net income all items of income that are determined to be improperly included in net income because of a conflict with a federal statute, the United States Constitution, or the Florida Constitution.

30. Section 120.52(8), Florida Statutes, provides that an "invalid exercise of delegated legislative authority" means an "action which goes beyond the powers, functions, and duties delegated by the Legislature."

31. Further, a proposed or existing rule is an invalid exercise of delegated legislative authority if (i) the agency has exceeded its grant of rulemaking authority, (ii) the rule enlarges, modifies, or contravenes the specific provisions of law implemented, (iii) the rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency, or (iv) the rule is arbitrary or capricious. § 120.52(8), Fla. Stat.

32. Section 220.12, Florida Statutes, provides that a taxpayer's net income for a taxable year will be its adjusted federal income.

33. Section 220.13, Florida Statutes, provides that "adjusted federal income" means the taxpayer's federal taxable income with Florida additions and subtractions.

34. Section 220.15(1), Florida Statutes, provides that the adjusted federal income of a taxpayer doing business within and without Florida will be apportioned by multiplying it by an apportionment fraction consisting of a property factor, a payroll factor, and a double-weighted sales factor.

35. Section 220.15(5), Florida Statutes, provides that the sales factor is a fraction, the numerator of which is the total sales of the taxpayer in Florida during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year.

36. Additionally, section 220.15(5)(a), Florida Statutes, provides that "sales" means all gross receipts of the taxpayer except interest, dividends, rents, royalties, and gross receipts from the sale, exchange, maturity, redemption, or other disposition of securities. Royalty income is only included in "sales" if a significant portion of the taxpayer's business consists of dealing in or with the production, exploration, or development of minerals. § 220.15(5)(a), Fla. Stat.

37. Rule 12C-1.0155(1)(f)1 of the Florida Administrative Code states that, where the income-producing activity with respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income producing activity occurs in Florida, in the numerator of the sales factor.

38. Further, Rule 12C-1.0155(1)(f)1 of the Florida Administrative Code states that the sale or licensing of the use of a trade name, trademark, or patent will be attributable to the state in which the trade name, trademark, or patent is used.

39. Rule 12C-1.0155(2)(f)1 of the Florida Administrative Code states that "the rental, leasing, licensing, or other use of a trade name, trademark, or patent to a business entity located in Florida will be considered a Florida sale."

40. Section 220.152, Florida Statutes, provides that if the apportionment method provided in section 220.15, Florida Statutes, does not fairly represent the extent of a taxpayer's tax base attributable to Florida, the taxpayer may petition for, or Defendant may require, an alternative method of apportionment.

41. Rule 12C-1.0152(1)(a) of the Florida Administrative Code provides that an alternative apportionment method may not be invoked, either by Defendant or the taxpayer, merely because it reaches a different apportionment percentage than the regularly applicable apportionment formula, and may be invoked only if the regularly applicable apportionment formula leads to a grossly distorted result.

42. Rule 12C-1.0152(3) of the Florida Administrative Code provides that a departure from the regularly applicable apportionment formula will be authorized only in limited and specific cases where unusual fact situations, which will ordinarily be unique and nonrecurring, produce a result that is incongruous with the results of previous tax years under the regularly applicable apportionment method.

43. Section 213.801(1), Florida Statutes, provides that a penalty is imposed in case of a failure to file a required return.

44. Section 213.21(3)(a), Florida Statutes, provides that the Executive Director or his or her designee may determine whether the taxpayer's noncompliance was due to reasonable cause and not due to willful negligence, willful neglect, or fraud. See also Fla. Admin. Code R. 12-3.007(1)(a).

COUNT I
(Plaintiff Was Not Conducting Business in Florida.)

45. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 44 and further alleges:

46. Defendant's assertion that Plaintiff was subject to the CIT is improper because Plaintiff was not conducting business, earning or receiving income in Florida, nor was it a resident or citizen of Florida. § 220.11(1), Fla. Stat.

47. Plaintiff was a Delaware corporation that had its commercial domicile in Illinois. No part of Plaintiff's business took place in Florida. Plaintiff had no employees in Florida and did not maintain real property or tangible personal property in Florida.

48. Therefore, the Assessment is illegal, invalid, and must be withdrawn in its entirety.

COUNT II
(Plaintiff Did Not Have Nexus with Florida.)

49. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 48 and further alleges:

50. Defendant's determination that Plaintiff was required to file CIT returns for the Periods at Issue and pay CIT on its apportioned adjusted federal income when Plaintiff did not have a substantial nexus with or physical presence in Florida exceeds Florida's jurisdiction to tax and is a discriminatory and impermissible burden upon interstate commerce in violation of the Due Process and Commerce Clauses of the United States Constitution and is therefore invalid. See Quill Corp. v. North Dakota, 504 U.S. 298 (1992); Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

51. The Legislature intends that any items of income that are determined to be improperly included in net income because of a conflict with any federal statute, the United States Constitution or the Florida Constitution be excluded from net income. § 220.02(5), Fla. Stat.

52. Plaintiff's adjusted federal income is not subject to the CIT pursuant to the United States Constitution and section 220.02(5), Florida Statutes.

53. Therefore, the Assessment is illegal, invalid, and must be withdrawn in its entirety.

COUNT III
(Defendant's Rule Imposing CIT on Plaintiff Is Invalid.)

54. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 53 and further alleges:

55. Section 120.52(8), Florida Statutes, provides that an "invalid exercise of delegated legislative authority" means an "action which goes beyond the powers, functions, and duties delegated by the Legislature."

56. Further, a proposed or existing rule is an invalid exercise of delegated legislative authority if (i) the agency has exceeded its grant of rulemaking authority, (ii) the rule enlarges, modifies, or contravenes the specific provisions of law implemented, (iii) the rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency, or (iv) the rule is arbitrary or capricious. Id.

57. Rule 12C-1.011(1)(p)1 of the Florida Administrative Code provides that conducting business, earning or receiving income in Florida, or being a resident or citizen of Florida include selling or licensing the use of intangible property in Florida. Rule 12C-1.011(1)(p)1 of the Florida Administrative Code provides, as an example, that licensing the use of a trade name, trademark or patent to a business entity located in Florida will subject a corporation to the CIT.

58. To the extent Defendant relied on Rule 12C-1.011(1)(p)1 of the Florida Administrative Code to subject Plaintiff to the CIT for licensing its Intellectual Property, that reliance was improper.

59. Rule 12C-1.011(1)(p)1 of the Florida Administrative Code is an invalid exercise of delegated legislative authority because it exceeds Defendant's grant of rulemaking authority, enlarges, modifies, and contravenes the specific provisions of law, fails to establish adequate

standards for agency decisions and vests unbridled discretion in the agency, and is arbitrary and capricious.

60. Therefore, the Assessment is illegal, invalid, and must be withdrawn in its entirety.

COUNT IV
(Defendant Improperly Apportioned Plaintiff's Income to Florida.)

61. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 60 and further alleges:

62. If it is ultimately found that Plaintiff is subject to the CIT, the standard three-factor formula must be used to apportion Plaintiff's adjusted federal income. § 220.15(1), Fla. Stat.

63. Royalties are excluded from the sales factor unless a significant portion of the taxpayer's business consists of dealing in or with the production, exploration, or development of minerals. § 220.15(5)(a), Fla. Stat.

64. Furthermore, in 2007, the Legislature considered a proposal to amend the Florida statutes to include royalties in the sales factor but ultimately did not enact such legislation.

65. No portion of Plaintiff's business consisted of dealing in or with the production, exploration, or development of minerals.

66. Therefore, Plaintiff's royalty receipts may not be included in the sales factor.

67. To the extent Defendant relied on Rules 12C-1.0155(1)(f)1 and 12C-1.0155(2)(f)1 of the Florida Administrative Code to include Plaintiff's royalty receipts in its sales factor, its reliance was improper.

68. Defendant has failed to qualify the definition of "sales" in Rule 12C-1.0155 of the Florida Administrative Code to exclude royalties unless "a significant portion of the taxpayer's business consists of dealing in or with the production, exploration, or development of minerals," as required by section 220.15(5)(a), Florida Statutes.

69. Rules 12C-1.0155(1)(f)1 and 12C-1.0155(2)(f)1 of the Florida Administrative Code contradict the express terms of section 220.15(5)(a), Florida Statutes.

70. Therefore, Rules 12C-1.0155(1)(f)1 and 12C-1.0155(2)(f)1 of the Florida Administrative Code are an invalid exercise of delegated legislative authority because they exceed Defendant's grant of rulemaking authority, enlarge, modify, and contravene the specific provisions of law, fail to establish adequate standards for agency decisions and vest unbridled discretion in the agency, and are arbitrary and capricious.

71. To the extent Defendant relied on Section 220.152, Florida Statutes, or Rule 12C-1.0152 of the Florida Administrative Code—i.e., relied on an alternative apportionment method—to include Plaintiff's royalty receipts in its sales factor, or to compute Plaintiff's sales factor based on the sales factor of another company, its reliance was improper.

72. Defendant could not use an alternative apportionment method because it did not and could not show that the regularly applicable apportionment formula would lead to a grossly distorted result if applied to Plaintiff's income. Fla. Admin. Code R. 12C-1.0152(1)(a).

73. Defendant could not use an alternative apportionment method because it did not and could not show that Plaintiff's facts were unusual and produced a result that was incongruous with the results of previous tax years under the regularly applicable apportionment formula. Fla. Admin. Code R. 12C-1.0152(3).

74. No portion of Plaintiff's adjusted federal income is apportioned to Florida.

75. Therefore, the Assessment is illegal, invalid, and must be withdrawn in its entirety.

COUNT V

(The Assessment Violates the Fair Apportionment Requirement of the United States Constitution.)

76. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 75 and further alleges:

77. The Assessment violates the requirement that a state tax such as the CIT be fairly apportioned. Therefore, the Assessment violates the Due Process and Commerce Clauses of the United States Constitution. Oklahoma Tax Comm'n v. Jefferson Lines, Inc., 514 U.S. 175 (1995); Allied-Signal, Inc. v. Director, Div. of Taxation, 504 U.S. 768 (1992); Container Corp. of Am. v. Franchise Tax Bd., 463 U.S. 159 (1983); Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

78. The Assessment fails to reflect a reasonable sense of how income is generated and causes taxation of income arising outside of Florida. Container Corp. of Am. v. Franchise Tax Bd., 463 U.S. 159 (1983); Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

79. The Assessment unconstitutionally violates the requirements that a measure of tax be fairly related to the benefits provided by the State to the person and be reasonably related to the person's presence or activities in the State. Oklahoma Tax Comm'n v. Jefferson Lines, Inc., 514 U.S. 175 (1995); Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

80. Therefore, the Assessment is illegal and invalid and must therefore be withdrawn in its entirety.

COUNT VI

(The Assessment Violates the Florida and United States Constitutions.)

81. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 80 and further alleges:

82. The actions of Defendant contravene the requirement of article VII, section 1, subsection (a) of the Florida Constitution, which provides that "[n]o tax shall be levied except in pursuance of law."

83. Further, the actions of Defendant violate the Commerce Clause and the Due Process Clause of the United States Constitution.

84. The Assessment attributes income of Plaintiff to Florida that is out of all appropriate proportion to the business transacted in Florida (of which there is none), has led to a grossly distorted result, is inherently arbitrary, and produces an unreasonable result. Container Corp. of Am. v. Franchise Tax Bd., 463 U.S. 159, 170 (1983); Hans Rees' Sons v. North Carolina ex rel. Maxwell, 283 U.S. 123, 135-36 (1931).

85. Therefore, the Assessment is illegal, invalid, and must be withdrawn in its entirety.

COUNT VII
(The Penalties Should Be Waived.)

86. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 85 and further alleges:

87. In the event that Plaintiff is liable for any amount of CIT asserted as due, Defendant has improperly assessed penalties that are excessive, unreasonable, and without legal basis.

88. Even if such penalties could be properly asserted, the penalties should be waived due to reasonable cause and the absence of negligence. § 213.21(3)(a), Fla. Stat.; Fla. Admin. Code R. 12-3.007(1)(a).

89. Plaintiff had a reasonable basis for believing that it was not subject to the CIT.

90. Defendant abused its discretion by failing to waive penalties.

91. Therefore, the Assessment is illegal and invalid to the extent that it imposed penalties and must be withdrawn for the portion of the Assessment imposing penalties.

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

A. Enter a Judgment that Plaintiff was not conducting business in Florida;

B. Enter a Judgment that Plaintiff did not have nexus with Florida;

C. Declare Rules 12C-1.011 and 12C-1.0155 of the Florida Administrative Code to be invalid and unenforceable;

D. Declare that Defendant improperly apportioned Plaintiff's income to Florida;

E. Declare that the Assessment violates the fair apportionment requirement of the United States Constitution;

F. Declare that the Assessment violates the Florida and United States Constitutions;

G. Enter a Judgment that the penalties should be waived; and

H. Provide such other and further relief as the Court deems appropriate.

Respectfully submitted,

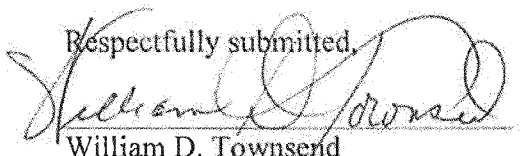

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EXHIBIT A

FLORIDA DEPARTMENT OF REVENUE

NOTICE OF PROPOSED ASSESSMENT

09/02/2014

Audit Number : 200164319
Tax : Corporate Income Tax
ID Number : 26-1892561
Audit Period : 12/27/2008, 12/26/2009, 12/25/2010, 12/31/2011, 10/01/2012

KRAFT FOODS GLOBAL BRANDS INC
3 LAKES DR
NORTHFIELD IL 60093-2753

The *Notice of Proposed Assessment* ("Notice") identifies the deficiency resulting from an audit of your books and records for the audit period indicated. The Department has previously provided you with schedules of the various transactions supporting the basis for the proposed assessment.

Assessment Authority: Chapter 220, F.S.

Tax		$	8,546,862.00
Penalty		$	4,273,430.00
Penalty - Fraud		$	0.00
Penalty - Other		$	0.00
Interest Through	09/02/2014	$	2,067,968.71
Total Deficiency		$	14,888,260.71
Less: Payment(s)		$	0.00
Less: Offset (s)		$	0.00
Balance Due		$	14,888,260.71

Plus additional daily interest at 1,639.12 per day from 09/03/2014, through the payment date. See Page 2, "Addendum to Notice of Proposed Assessment" for explanation of interest rates (if applicable).

If you do not agree with the proposed assessment, you may request a review through one of the following:

- Informal protest
- administrative hearing
- judicial proceeding

The enclosed brochure provides you with the procedures for requesting a review.

If you file an **Informal written protest**, you must file it with the Department no later than 11/03/2014, unless you request and receive an extension prior to this date. If you fail to file an informal written protest, the proposed assessment will become a FINAL ASSESSMENT on 11/03/2014.

If you request an **administrative hearing** or **judicial proceeding**, you must file your request no later than 12/31/2014 or 60 days from the date the assessment becomes a Final Assessment. Florida Statutes mandate this time limit and the Department cannot extend it. You must file the petition for an administrative hearing with the Department of Revenue. For judicial proceedings, you must file a complaint with the appropriate Clerk of the Court.

If a balance is due and you agree with the proposed assessment, please pay the balance due within 60 days from the notice date. Please return your payment in the enclosed envelope and include the NOPA remittance coupon.

The amount shown on this notice may not include: credits, payments, notices of tax action, delinquency notices or other billings previously issued by the Department.

NOTE: If you are protected by Federal Bankruptcy Law, you are not required to pay except as provided by Title 11 United States Code (U.S. Bankruptcy Code).

Refer questions and correspondence to:

Compliance Support Process
P.O. Box 5139
Tallahassee, FL 32314-5139
Phone: 850-617-8565 Fax: 850-245-5981

FLORIDA DEPARTMENT OF REVENUE

Addendum to Notice of Proposed Assessment
Schedule of Tax, Penalty and/or Interest

09/02/2014

KRAFT FOODS GLOBAL BRANDS INC
3 LAKES DR
NORTHFIELD IL 60093-2753

Audit Number : 200164319
Tax : Corporate Income Tax
ID Number : 26-1892561
Audit Period : 12/27/2008, 12/26/2009, 12/25/2010, 12/31/2011, 10/01/2012

I. 12% Interest Rate		II. Market Interest		III. Combined Liability			
Applied Period		Applied Period		Combined Applied Period			
Tax $	**Interest Through 09/02/2014** $	**Tax** $	**Interest Through 09/02/2014** $	**Tax** $	**Penalties** $	**Interest Through 09/02/2014** $	**Total** $
0.00	0.00	8,546,862.00	2,067,968.71	8,546,862.00	4,273,430.00	2,067,968.71	14,888,260.71
					Less: Payments		0.00
					Offsets		0.00
					Balance Due		$ 14,888,260.71

I. Twelve (12) Percent Interest Rate: For taxes due on or before December 31, 1999, an interest rate of 12% per annum applies, except for Corporate Income and Emergency Excise Taxes. The additional daily interest amount for this portion of the liability is $ 0.00

II. Market Interest Rate: For taxes due on or after January 1, 2000, a floating interest rate applies. This rate will be updated January 1 and July 1 of each year. The additional daily interest amount for this portion of the liability is $1,639.12. Current and prior interest rates are posted on our Internet site at: **www.myflorida.com/dor** or you can contact Taxpayer Services at 800-352-3671 and select Information on Taxes from the option menu.

III. Combined Liability: This column combines columns I and II and represents the total tax, penalties and interest assessed. The combined daily interest amount is $1,639.12. Please include additional interest accrued from 09/03/2014 through the date your payment is postmarked.

Refer questions and correspondence to:

Compliance Support Process
P.O. Box 5139
Tallahassee, FL 32314-5139
Phone: 850-617-8565 Fax: 850-245-5981

EXHIBIT B

FLORIDA
Executive Director
Leon M. Biegelski

December 23, 2016

Craig B. Fields, Esq.
Partner
Morrison Foerster LLP
250 W. 55th St.
New York, NY 10019-9710

Re: Notice of Decision
International Great Brands LLC, successor to
Kraft Foods Holdings, Inc.
BPN: 2147536
Audit #: 200132893
Corporate Income Tax
Period: December 31, 2006, through December 31, 2011

Proposed Assessment Amount:		$	8,193,456.88
Sustained Amount:		$	8,193,456.88
Balance Due:	*	$	8,847,455.69

* Includes payments and updated interest through December 23, 2016. Interest continues to accrue at $774.57 per day until the postmark date of payment. Daily interest is subject to change every January 1 and July 1

Re: Notice of Decision
International Brands LLC, as successor to
Kraft Foods Global Brands, Inc.
BPN: 4333933
Audit #: 200164319
Corporate Income Tax
Period: December 27, 2008, through October 1, 2012

Proposed Assessment Amount:		$	14,888,260.71
Sustained Amount:		$	14,888,260.71
Balance Due:	*	$	16,268,452.56

* Includes payments and updated interest through December 23, 2016. Interest continues to accrue at $1,639.12 per day until the postmark date of payment. Daily interest is subject to change every January 1 and July 1.

Dear Mr. Fields:

This is the Department's response to the protest letters dated October 28, 2014 which the respective taxpayers filed against the assessments reference respectively. The letters of protest, the case files, and other available information have been carefully reviewed. This reply constitutes the issuance of our joint Notice of Decision that applies to the respective taxpayers pursuant to the provisions of Rule 12-6.003, Florida Administrative Code (F.A.C.). It represents the Department's position based on the law applicable to the issues under protest.

I. ISSUES

1. Whether Kraft[1] is subject to Florida corporate income tax under Florida Administrative Code Rule 12C-1.011(1)(p)1 when it received income from licensing the use of its trademark which appeared on food products sold in Florida?

2. Whether Kraft's royalty income is apportionable business income under Florida Administrative Code Rule 12C-1.0155(1)(f)1 when the Kraft trademark from which it derives income is readily identified?

3. Whether the Department properly used an alternative apportionment method under section 220.152, Florida Statutes when the application of the standard three factor apportionment formula eliminates Kraft's legitimate FL CIT?

4. Whether Kraft is responsible for the penalty imposed by Section 220.801(1), Florida Statutes because it failed to file FL CIT returns during the audit period?

II. FACTS

1. Kraft is a Delaware corporation headquartered in Illinois.

2. Kraft does business throughout the United States but alleges that it does not do business in Florida.

3. Kraft had no employees in Florida.

4. Kraft owned no property in Florida.

5. Kraft owned various intellectual properties including trademarks.

6. Kraft Food Holdings, Inc. ("Holdings") licensed it trademarks to Foods International, Inc. ("International") in 2002.

7. The license required International to pay royalties to Holdings for use of the Kraft trademark.

[1] "Kraft" includes both Kraft Holdings and Kraft Global. The two entities will be discussed in the singular unless it is necessary to refer to them separately.

8. Food products bearing the Kraft trademark are sold in Florida.

9. Holdings and Kraft Foods Global Brands, Inc. ("Global") filed federal corporate income tax returns ("federal CIT") during the years comprising the FL CIT audit periods at issue in this protest.

10. The respective Kraft federal CIT returns showed that it received income from their receipt of royalties.

11. Neither Holdings nor Global filed FL CIT returns during their respective audit periods.

12. The Department audited Holdings to determine its compliance with its FL CIT) responsibilities under the FL CIT Code, Chapter 220, Florida Statutes.[2]

13. The Department concluded that neither of the Kraft entities complied with their FL CIT responsibilities because they failed to pay FL CIT on the royalty income they received for the use of the Kraft trademark in Florida. The Department issued each Kraft entity a notice of proposed assessment under Florida Administrative Code Rule 12-6.002(6).

14. Holdings and Global filed nearly identical protests under Florida Administrative Code Rule 12-6.003(1) on October 28, 2015.

15. This Notice of Decision, issued under Florida Administrative Code Rule 12-6.003(3)(b), answers Kraft's protest.

16. The assessments protested here were the subject of a protest Holdings brought in 2007.[3] The issues in that protest were largely identical to the issues in this in this protest. The Department reaches the same conclusion in this protest that it reached in the previous protest (see below at section IV).

II. TAXPAYER'S POSITION

Kraft claims that it made no sales in the State of Florida. Kraft asserts that the income it earns from the sale of products bearing its trademark in the State of Florida is beyond the state's taxing power. Kraft's argument rests on the premise that it has no physical presence in the state, hence no taxable nexus, because its daily activities take place in Illinois and New Jersey. Kraft argues that a Florida court will not follow the provisions of Florida Administrative Code Rule 12C-1.0155(1)(f)1. despite the rule's specific applicability to the taxability of income attributable to payments royalties.

Kraft challenges the Department's application of the sales factor under section 220.15(5)(c), Florida Statutes, by itself to calculate the apportionment fraction to apply to Kraft's income to

[2] The audit covered the period December 31, 2006 through December 31, 2011 under audit number 200132893.
[3] Audit number 20001114 for the period December 31, 2002; audit number 20002 for the period December 31, 2003, through December 31, 2004, and audit number 200030054 for December 21, 2015.

determine the amount of its pre-adjustment income subject to FL CIT. Lastly, Kraft argues that it is not subject to the levy of the penalty that follows from a taxpayer's failure to file returns.

III. ANALYSIS

1. Kraft Conducts Business in Florida and Is Subject to FL CIT under Florida Administrative Code Rule 12C-1.011(1)(p)1 because It Received Income from Licensing the Use of Its Trademark which Appeared on Food Products Sold in the State

Florida levies tax on the income a corporation earns from conducting business in the State. §220.02(1), Fla. Stat. Conducting business includes licensing trademarks for use in Florida. Fla. Admin. Code R. 12.011(1)(p)1.[4] "[E]very state has equal rights when taxing the commerce it touches", *General Motors Corporation v. Washington*, 377 U.S. 436, 440, 84 S.Ct. 1564, 1567 (1964). Interstate commerce is not immunized from paying "its fair share of the costs of government in return for the benefits it derives from within the State". *Northwestern States Portland Cement Company v. State of Minnesota*, 358 U.S. 450, 462, 79 S.Ct. 357, 364 (1959).

Kraft licensed the use of its trademark which appeared on food products sold in Florida. Those sales generated income, some of which was paid to Kraft as a royalty. The Department assessed CIT on the royalty income to the sales of products bearing the Kraft trademark in Florida. Kraft would defeat the state's power to tax its royalty income on the theory that its day to day business activities take place in Illinois and New Jersey which, tacitly, argues it has no physical presence in Florida thus precluding the state's power to levy its CIT.

The value of, hence the income from, the Kraft trademark derives from the goodwill associated with the trademark. The mark and the goodwill it symbolizes are inseparable. *Marshak v. Green*, 746 F.2d 927 (2nd Cir. 1984). "In a very real sense, the trademark is the product and the product is the trademark." *Home Depot USA. Inc. v. Arizona State Department of Revenue*, Docket no. TX 2006-000240 (Supr. Ct. 2009). "[A] trademark symbolizes the public's confidence or goodwill in a particular product ... [it] is not the subject of property except in connection with an existing business." *Premier Dental Products Company v. Darby Dental Supply Company, Inc.*, 794 F.2d 850, 853 (3rd Cir. 1986). The Kraft trademark and its inseparable goodwill guarantees the consumer that he or she is purchasing a quality product. Kraft's demonstrable presence in Florida derives from the abstraction of its mark and its power to generate income. Since access to customers is the source of the licensor's income rather than a paper agreement, *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13, 18 (S.C. 1993), the appearance of Kraft products on shelves in a supermarket, is no different from Kraft products appearing on shelves in a Kraft brick and mortar store staffed by Kraft personnel.

The majority of courts hold that a taxpayer's physical presence in the state is a not prerequisite to its power to tax the income the taxpayer earns from the appearance of its trademark in the state.[5]

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[4]The Rule has the effect of law. *State v. Jenkins*, 469 So.2d 733, 734 (Fla. 1985).

[5] *Bridges v. Geoffrey, Inc.* 984 So.2d 115 (La. Ct. App. 2008); *Geoffrey, Inc. v. Commissioner of Revenue*, 899 N.E.2d 87 (Mass. 2009); *Geoffrey v. Oklahoma Tax Commission*, 132 P.3d 632 (Okla. Civ. App. 2005). Gap

The Court in *International Harvester Co. v. Wisconsin Department of Revenue*, 322 U.S. 435, 441, 84 S.Ct. 1060, 1064 (1944) held that a taxpayer's personal presence in the state is not essential to the constitutional levy of the state's CIT.

Florida follows the South Carolina Supreme Court's ruling in *Geoffrey*, 437 S.E.2d 13, which the Louisiana Supreme Court recognized as the "leading case among states that have asserted their jurisdiction over non-resident entities without a physical presence in the state". *Bridges v. Autozone Properties, Inc.*, 900 So.2d 784, 805 (La. 2005).

Geoffrey held that "[i]t is well settled that a taxpayer need not have a tangible physical presence in a state for income to be taxable there. The presence of intangible property alone is sufficient to establish nexus." *Geoffrey*, 437 S.E.2d at 23, citing *American Dairy Queen Corporation v. Taxation and Revenue Department*, 605 P.2d 251, 254 (N.M. Ct. App. 1979). The court in *A&F Trademark, Inc. v. Tolson*, 605 S.E.2d 187 (N.C. App. 2004) rejected "the contention that physical presence is the *sin qua non* of a state's jurisdiction to tax under the Commerce Clause for purposes of income and franchise taxes", *id.*, at 196 (italics in original). Kraft has substantial nexus in Florida because Kraft licensed its trademark for use in the state and derived income from its use in the state.

2. Kraft's Royalty Income Is Apportionable Business Income under Florida Administrative Code Rule 12C-1.0155(1)(f)1 because that Income is Readily Identified by the Appearance of the Kraft Trademark in the State

Pursuant to section 220.03(1)(r), Florida Statutes business income is income that is not nonbusiness income. Business income is income earned from intangible personal property when the "acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business." Royalty income is business income when it earned from the taxpayer's regular course of business. Fla. Admin. Code R. 12C-1.016(1)(b)5.

Kraft's business is holding trademarks. Business income is apportioned. *F.W. Woolworth Co. v. Taxation and Revenue Department of New Mexico*, 458 U.S. 354, 357, 102 S.Ct. 3128, 3131 (1982). Whereas nonbusiness income is allocated, section 220.16, Florida Statutes, business income is apportioned. Allocation to a single state and apportionment among the states in which the taxpayer does business is "theoretically incommensurate", that is, both methods of tax cannot reach the same item of income. *Mobil Oil Corporation v. Commissioner of Taxes of Vermont*, 445 U.S. 425, 444, 100 S.Ct. 1223, 1234 (1980).

A taxpayer's apportionment formula includes the business income generated from intangible personal property[6] when the activity that produced that income is readily identifiable. It is that income that measures Kraft's business activity within the state thus confirming the benefit it received from the state's market that contributed to Kraft's profits. The legislature intended "to

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(Apparel), Inc. v. Secretary, Department of Revenue, State of Louisiana, 886 So.2d 459 (La. Ct. App. 2004); and *Lanco, Inc. v. Director, Division of Taxation*, 879 A.2d 1234 (N.J. Ct. App. Div. 2005).

[6] A license is intangible property. *Metropolitan Dade County v. Tropical Park, Inc.* 231 So.2d 243, 246 (Fla 3rd DCA 1970).

tax that portion of a multi-state corporate income derived from business activities in Florida." Coulter Electronics, Inc. v. Department of Revenue, 365 So.2d 806, 809 (Fla. 1st DCA 1978).

An apportionable amount of Kraft's royalty income was, incontrovertibly, produced by its trademark in Florida. Kraft's federal CIT tax returns show specifically that it received royalty income.[7] The Instructions to the FL CIT return 1120[8] states at III-A Line 3, Sales Factor: A taxpayer includes royalty income in calculating its sales factor "if such income is significant in the taxpayer's business." *Id.*, at (a). Kraft's royalty income was the sole source of its income the audit period and is significant for FL CIT purposes:

Year	Federal CIT form 1120, line 7, Gross royalties $	Federal CIT form 1120, Line 11, Total income (after taking losses into account) $	Percent of royalty income compared to total income
2008	995,025,617.00	993,597,546.00	.99856
2009	2,328,437,075.00	2,329,911,274.00	.99938
2010	2,369,065,103.00	3,688,123,539.00	.64234
2011	2,182,975,247.00	2,185,353,121.00	.99891
2012	1,433,888,638.00	1,436,733,102.00	.99801

A Florida court will defer to the Department's interpretation of Florida Administrative Code Rule 12C-1.0155(1)(f)1. because, in this situation, the Department is operating in an area that requires its expertise and specialized knowledge. *Muratti-Stuart v. Department of Business and Professional Regulation*, 174 So.3d 538, 540 (Fla. 4th DCA 2015). Florida courts accord great weight to an agency's long standing rule.[9] *Austin v. Austin*, 350 So.2d 102, 104 (Fla. 1st DCA 1977). The Department is in the best position to weigh the facts in *Geoffrey*, 437 S.E.2d 13 against a taxpayer's Florida and federal CIT returns to determine whether a taxpayer is using a trademark in Florida to generate apportionable royalty income. This follows necessarily from the legislature's authorizing the Department to promulgate CIT rules, section 220.51, Florida Statutes[10] and the courts' concomitant recognition that those rules operate with the authority of law. *Jenkins*, 469 So.2d at 734.

The royalty income that Kraft earns from the appearance of its trademark in Florida is readily identified vis-à-vis the income that its trademark earns elsewhere. Kraft's royalty income is,

[7] Kraft Foods Global U.S. Corporation Income Tax Return, Form 1120, line 7.
[8] A tax form and its instructions are rules under the Florida Administrative Procedures Act. §120.52(16), Fla. Stat.
[9] Florida Administrative Code Rule 12C-1.0155 was promulgated in 1994 and amended in 2001. It remained unchanged and unchallenged following the total revision of the Administrative Procedures Act in 1996. Ch. 96-159, §3, at 150, Laws of Fla.
[10] See, also, § 213.06(1), Fla. Stat.

therefore, apportionable to Florida by authority of Florida Administrative Code Rule12C-1.0155(1)(f)1.

3. The Department Properly Used an Alternative Apportionment Method under Section 220.152, Florida Statutes because Application of the Standard Three Factor Method Unfairly Eliminates Kraft's Valid FL CIT Liability

The Florida Legislature levies tax on all income a corporation derives in this state. §220.02(1), Fla. Stat. Accordingly, the legislature authorized the Department to apply an apportionment method other than the standard three factor method when the application of the standard method does not fairly represent the extent of the taxpayer's income producing activities in Florida. §220.152, Fla. Stat. The statute allows the exclusion of any one or more factors. §220.152(2), Fla. Stat. The facts that Kraft presented to the Department required that Kraft's FL CIT liability be calculated with reference to the sales factor alone since Kraft had no property or payroll in Florida. "Arithmetical perfection is not to be expected from apportionment formulae." *Moorman Manufacturing Company v. Bair*, 437 U.S. 267, 273, 98 S.Ct. 2340, 2351 (1978) (Powell, J., dissenting (agreeing with the Court on this point) citing *International Harvester Co. v. Evatt*, 329 U.S. 416, 422, 67 S.Ct. 444, 447 (1947)). A single factor formula that provides a rough approximation is sufficient. *Moorman Manufacturing*, 437 U.S. at 273, 98 S.Ct. 2344. The Court does not impose any constitutional restraint on a state's use of a particular formula. *Id.*, 437 U.S. at 273, 98 S.Ct. 2344. A single factor formula is presumptively valid. *Id.* A state's apportionment formula may be a rough approximation of the corporation's income that is reasonably related to the activities conducted within the taxing state. *Exxon Corporation v. Wisconsin Department of Revenue*, 447 U.S. 207, 223, 100 S.Ct. 2109, 2120 (1980).

The sales factor is a fraction – the denominator is composed of the taxpayer's gross receipts everywhere;[11] the numerator is composed of the taxpayer's gross receipts in Florida. §220.15(5), Fla. Stat.[12] The definition of sales excepts royalty income. §220.15(5)(a)2., Fla. Stat. That exception, however, does not apply in this case. The exception may be used to reduce an otherwise existing tax liability, but it will not completely cancel a taxpayer's duty to contribute its share to support local tax burdens, *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, 438, 59 S.Ct. 325, 327 (1939), when royalty trademark royalties are the taxpayer's sole source of income received from the business it does in the state. Tax exceptions are strictly construed against the taxpayer. *Orange County v. Bellsouth Telecommunications, Inc.*, 812 So.2d 475, 483 (Fla. 5th DCA 2002) (Orfinger, J., dissenting), citing *State Department of Revenue v. Kemper Investors Life Insurance Company*, 660 So.2d 1124, 1127 (Fla. 1st DCA 1995). A Florida court will follow Florida Administrative Code Rule 12C-1.016(1)(b)(5) because the state's expressed intent to tax income earned in the state, and section 220.02(1), Florida Statutes, will take precedence over an exception.

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[11] §220.15(7), Fla. Stat.

[12] The quotient of the division is the taxpayer's sale's factor. It is weighted by 50 percent.

4. Kraft is Responsible for the Penalty under Section 220.801(1), Florida Statutes because It Failed to File FL CIT Returns During the Audit Period

A "taxpayer" for purposes of the FL CIT is a corporation subject to tax under chapter 220, Florida Statutes. Taxpayers subject to FL CIT must file an annual FL CIT return when it files a federal return "regardless of whether such taxpayer is liable for tax under [the FL CIT Code]." §220.22(1), Fla. Stat, *see, too,* Fla. Admin. Code R. 12C-1.022(1). Taxpayers who fail to file the required tax return are subject to penalty. §220.801(1), Fla. Stat. It is irrefutable that both Global and Holdings failed to file FL CIT returns throughout their respective audit periods.[13] It is further irrefutable that Kraft earned royalty income from the sale of food products bearing its trademark in Florida. Settled jurisprudence holds that "[e]very man is supposed to know the law." *Aquarius Condominium Association, Inc. v. Markham*, 442 So.2d 423, 425 (Fla. 4th DCA 1983); *Ves Carpenter Contractors, Inc. v. City of Dania*, 422 So.2d 341, 344, n. 3 (Fla. 4th DCA 1982), citing *North Miami v. Seaway Corporation*, 9 So.2d, 705, 707 (1942). Accordingly, Kraft is presumed to have knowledge of Florida Administrative Code Rules 12C-1.0155(1)(f)1. (stating that royalties generated from the use of a trademark in the state is included in the sales factor numerator (hence Florida)), and 12C-1.011(1)(p)1. (conducting business in Florida includes licensing a trademark for use in Florida), and the statutes pertaining to filing, *supra.*

The Florida legislature and the Department provided Kraft a number of options to determine or clarify its filing responsibility vis-à-vis any perceived tension between the royalty income exception under section 220.15(5)(a)2., Florida Statutes, and the Florida administrative rules, functioning as fact-specific statutory surrogates, to wit: a Declaratory Statement under section 120.565; a Technical Assistance Advisement under Florida Administrative Code Rule 12-11.003; and a Request for Technical Advice under Florida Administrative Code Rule 12-11.011. Kraft pursued none of these options, hence proceeded at its own risk.

The facts in this case are removed from those in *Philip C. Owen, Chartered v. Department of Revenue*, 597 So.2d 380 (Fla. 1st DCA 1992). In that case, the taxpayer was subject to penalties for failure to file emergency excise returns. The court held that the taxpayer could have known of its filing obligation, and its potential exposure to penalties, had it read four different subsections from three different chapters in pari materia. *Id.* The court noted that penalty statutes are strictly construed against the taxing authority and, that being the case, the taxpayer was not required to take the aforementioned actions. *Id.* Kraft would know of its responsibility to file the necessary returns and its potential exposure to penalties without having to read several statutes in pari materia. All requirements are contained in Chapter 220, Florida Statutes and Florida Administrative Code Chapter 12C – which is dedicated to the administration of Chapter 220, Florida Statutes.

Kraft's statutory status as a taxpayer, and the administrative rules that apply to the use of trademarks in Florida put it on notice that it was responsible for filing FL CIT returns. Kraft was further on notice that its failure to comply would result in the imposition of penalties. Kraft failed to fulfill its responsibility and is therefore subject to the penalty.

[13] See fact 11, above.

IV. CONCLUSION

Licensing a trademark for use in Florida is a means of conducting business in the state and subjects the licensor to FL CIT upon the income it earns from that trademark. Fla. Admin. Code R. 12C-1.011(1)(p)1. Florida follows the majority rule announced by the South Carolina Supreme Court in *Geoffrey*, 437 S.E.2d 13. The simple presence in the state of the Kraft's income producing trademark dispenses with the necessity of physical presence.

The Kraft trademark is unique and readily identifiable. The income from the licensing of the trademark for use in Florida allows that source of income to be traced to the states in which it appears. The income Kraft receives from its trademark in Florida is properly made part of its sales factor numerator. Likewise, the uniqueness of the trademark allows the derivative income to be traced to the states in which the trademark appears. Accordingly, that income is properly made part of Kraft's sales factor denominator. Fla. Admin. Code R. 12C-1.0155(1)(f)1.

The legislature authorized the Department to apply an alternative apportionment method, that is, one different from the standard three factor formula comprised of property, payroll and sales described in section 220.15(5), Florida Statutes. §220.152, Fla. Stat. The Department properly applied an alternative method because, had it not, Kraft would have earned and extracted income from the business its trademark generated in Florida without contributing its fair share for the maintenance of the market it uses to exploits for its gain.

Kraft is responsible for paying the penalty levied under section 220.801(1), Florida Statutes because It failed to file FL CIT returns during the audit period. Kraft is presumed to know Florida law when it entered the state to do business. Section 220.21, Florida Statutes, provides taxpayers notice of their obligation to file FL CIT returns, and section 220.801, Florida Statutes, provides taxpayers with notice that their failure to do so will result in a penalty. Florida provides several means to assist taxpayers in understanding FL CIT laws and regulations if a taxpayer is confused about same. Kraft did not avail itself of these opportunities. Kraft earned income from Florida and did not fulfill its statutory duty to advise the state of that fact. Accordingly, the Department assessed penalties on Kraft.

The conclusion reached in this protest is consistent with the conclusion the Department reached in Holdings' previous protest.[14] Holdings wrongly asserted that it had no nexus with Florida despite its receiving income from the trademarks it licensed for use in Florida and despite the legislature's stated intent that corporations earning income from business done in Florida were subject to the levy of a CIT. §220.02(1), Fla. Stat. The Department found that the limitation imposed on royalty income by section 220.15(5)(a)2., Florida Statutes was superseded by Florida Administrative Code Rule 12C-1.011(1)(p) to fully effectuate legislative intent. Accordingly, the imposition of penalties is justified since Kraft was on notice of the position the position the Department took in the previous audits.

For these reasons, the Department sustains its assessment in full.

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[14] See note 3, above.

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Enclosed for your convenience is an audit remittance coupon. Payment, including interest to the postmark date of payment, should be returned in the enclosed envelope, along with the audit remittance coupon. The check should reflect the audit number.

TAXPAYER APPEAL RIGHTS

This Notice of Decision constitutes the final position of the Department unless a Petition for Reconsideration is filed on a timely basis, in which event the Notice of Reconsideration will be the Department's final position. The requirements for a Petition for Reconsideration are set forth below.

Pursuant to Section 72.011(2), F.S. and Rule Chapter 12-6, F.A.C., the respective assessments are final as of the date of this Notice of Decision unless the respective protestors file a written Petition for Reconsideration postmarked within thirty (30) days of the date of this Notice of Decision and addressed to Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, FL 32314-7443. The Petition for Reconsideration must contain new facts or arguments; otherwise, it is subject to dismissal.

Absent a timely-filed Petition for Reconsideration, the assessment reflected in the Notice of Decision is final, and you have three alternatives for further review:

1) Pursuant to Section 72.011, F.S., and Rule Chapter 12-6, F.A.C., you may contest the assessment in circuit court by filing a complaint with the clerk of the court. THE COMPLAINT MUST BE RECEIVED BY THE CLERK OF THE CIRCUIT COURT WITHIN SIXTY (60) DAYS OF THE DATE OF THIS NOTICE OF DECISION. Section 72.011(3), F.S., provides that no circuit court action may be brought unless you pay to the Department the amount of taxes, penalties, and accrued interest assessed by the Department that are uncontested and tender or post a bond for the remaining disputed amounts unless a waiver is granted, as provided in that section. Failure to pay the uncontested amounts will result in the dismissal of the action and imposition of an additional penalty of twenty-five percent (25%) of the tax assessed. The requirements of Chapter 72, F.S., are jurisdictional;

2) Pursuant to Sections 72.011, 120.569, 120.57, and 120.80(14), F.S., and Rule Chapter 12-6, F.A.C., you may contest the assessment in an administrative forum by filing a petition for a Chapter 120 administrative hearing with the Department of Revenue, Office of General Counsel, Post Office Box 6668, Tallahassee, FL 32314-6668. THE PETITION MUST BE RECEIVED BY THE DEPARTMENT WITHIN SIXTY (60) DAYS OF THE DATE OF THIS NOTICE OF DECISION. The petition should conform to the requirements of the Uniform Rules promulgated pursuant to Section 120.54(5), F.S. Section 120.80(14), F.S., provides that before you file a petition under Chapter 120, F.S., you must pay to the Department the amount of taxes, penalties, and accrued interest that are not being contested. Failure to pay those amounts will result in the dismissal of the petition and imposition of an additional penalty of twenty-five percent (25%) of the tax assessed. Mediation pursuant to Section 120.573, F.S., is not available. The

requirements of Section 72.011(2) and (3)(a), F.S., are jurisdictional for any action contesting an assessment or refund denial under Chapter 120, F.S.; OR

3) Pursuant to Section 120.68, F.S., you may contest the assessment in the appropriate district court of appeal by filing a Notice of Appeal meeting the requirements of Rule 9.110, Florida Rules of Appellate Procedure, with i) the Clerk of the Department of Revenue, Office of General Counsel, Post Office Box 6668, Tallahassee, FL 32314-6668 and ii) with the clerk of the appropriate district court of appeal, accompanied by the applicable filing fee. THE NOTICE OF APPEAL MUST BE FILED WITH BOTH THE DISTRICT COURT OF APPEAL AND THE DEPARTMENT OF REVENUE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS NOTICE OF DECISION.

Please do not hesitate to contact me with any questions or comments.

Yours truly,

Charles Catanzaro
Tax Conferee
Technical Assistance & Dispute Resolution
(850)717-7602

Enclosure: Audit Remittance Coupon

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

Persons needing an accommodation to participate in any proceeding before the Technical Assistance and Dispute Resolution Office should contact that office at 850-617-8346, or you may also call via the Florida Relay System at 800-955-8770, at least five working days before such proceeding.

cc: William D. Townsend, Esq.
Dean Mead & Dunbar
215 S. Monroe St., Ste. 815
Tallahassee, FL 32301-1858

FLORIDA

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NORTHFIELD IL 60093-2753

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EXHIBIT C

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

INTERCONTINENTAL BRANDS LLC
AS SUCCESSOR IN INTEREST TO
KRAFT FOODS GLOBAL BRANDS, INC.

Plaintiff,

v. **Case No.** _____

STATE OF FLORIDA,
DEPARTMENT OF REVENUE,

Defendant.
_____/

MOTION FOR ALTERNATIVE SECURITY

Plaintiff, Intercontinental Brands LLC as successor in interest to Kraft Foods Global Brands, Inc. ("Plaintiff"), by and through its undersigned counsel, pursuant to section 72.011(3)(b)2, Florida Statutes, hereby respectfully requests that the Court enter an order setting alternative security and as grounds therefore states:

1. On this date, Plaintiff has filed a Complaint pursuant to section 72.011, Florida Statutes, challenging an assessment of tax, penalty, and interest ("Assessment") issued to it by the Florida Department of Revenue ("Defendant").

2. Section 72.011(3), Florida Statutes, states that as a condition of having the Circuit Court decide the validity of an assessment, a taxpayer must post some form of security with the court or obtain a waiver of that requirement from Defendant. It also allows the Court to set alternative security if requested by the taxpayer. The purpose of requiring a taxpayer to provide any security is to ensure that it has the financial ability to pay the assessment should it not prevail in court.

3. Plaintiff requested from Defendant a waiver of the security requirement pursuant to section 72.011(3), Florida Statutes. However, Plaintiff has not yet received a response to that waiver request.

4. In this case, alternative security is appropriate because:

(a) This case involves constitutional questions, which only the Circuit Court has authority to determine;

(b) Plaintiff has more than sufficient assets to pay the Assessment should it not prevail in this litigation;

(c) Defendant audited Plaintiff and is, therefore, aware that Plaintiff has more than sufficient assets to pay the Assessment should it not prevail in this litigation and Plaintiff has requested a waiver from Defendant on such basis, which waiver request has not been decided;

(d) Requiring Plaintiff to post a bond or pay the entire contested amount would inflict unnecessary expense and burden on Plaintiff and effectively deny it the opportunity to have a court, at the trial level, decide the issues of law involved in this case; and

(e) Some arrangement, other than full payment or bond should be appropriate to satisfy Defendant that Plaintiff will meet its obligations as determined by this Court.

WHEREFORE, Plaintiff respectfully requests the Court enter an Order determining that Plaintiff need not post a bond or pay the disputed amounts into the registry of the Court or alternatively that it set other security arrangements as appropriate in its discretion, pursuant to section 72.011(3), Florida Statutes.

Respectfully submitted this 7 day of February, 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Alternative Security has been provided by hand-delivery to the following:

Mark Hamilton, Esq. – General Counsel
Office of the General Counsel
2450 Shumard Oaks Boulevard
Building 1
Tallahassee, FL 32311

Attorney

1267661