

---

Uline, Inc.,  
Appellant,

**ORDER ON CROSS-MOTIONS  
FOR SUMMARY JUDGMENT**

vs.

Commissioner of Revenue,  
Appellee.

File No. 9435-R  
Filed: June 23, 2023

---

This matter came before the Honorable Wendy S. Tien, Judge of the Minnesota Tax Court, on the parties' cross-motions for summary judgment.

Michael J. Kaupa and Tyler A. Young, Faegre Drinker Biddle & Reath LLP, represent Appellant Uline, Inc.

Jennifer A. Kitchak and Matt Mason, Assistant Minnesota Attorneys General, represent Appellee Commissioner of Revenue.

The court, upon all the files, records, and proceedings herein, now makes the following:

**ORDER FOR JUDGMENT**

1. As to the determination that Uline maintained sufficient minimum contacts in Minnesota to be subject to corporate franchise tax during the Years at Issue, Uline's motion for summary judgment is denied and the Commissioner's motion for summary judgment is granted.
2. As to the assessment of a 20 percent penalty for substantial understatement of liability under Minnesota Statutes section 289A.60, subdivision 4(b), Uline's

motion for summary judgment is granted and the Commissioner's motion for summary judgment is denied.

3. Not later than 60 days from the date of this Order, the parties must file a stipulation as to the tax amounts due under Minnesota Statutes chapter 290, consistent with paragraphs 1 and 2 of this Order, at which time this court will file a final order for judgment. If the parties are unable to reach agreement within that period of time, they must contact the court administrator for a pretrial conference.

IT IS SO ORDERED.

BY THE COURT:

---

Wendy S. Tien, Judge  
MINNESOTA TAX COURT

Dated: June 23, 2023

## MEMORANDUM

### I. FACTUAL BACKGROUND

The parties stipulated to the following material facts. Uline is an S Corporation with its headquarters and principal place of business in Pleasant Prairie, Wisconsin<sup>1</sup> at 12575 Uline Drive, Pleasant Prairie, Wisconsin 53158 ("Uline Headquarters").<sup>2</sup> Uline is a business-to-business catalog and web-based distributor of industrial and packaging products.<sup>3</sup> Uline shipped most

---

<sup>1</sup> First Stip. Facts. ¶ 1 (filed Dec. 16, 2022).

<sup>2</sup> Stip. ¶ 2.

<sup>3</sup> Stip. ¶¶ 6 & 104; Ex. J17 (list of Uline products).

inventory items from its distribution centers via common carrier to customers using next day delivery.<sup>4</sup>

In addition to the Uline Headquarters, Uline’s North American operations included seven distribution centers located in the U.S. that sold to customers throughout the U.S.<sup>5</sup> As of 2014 and 2015 (the “Years at Issue”), Uline did not have a physical office, distribution center, or other place of business in Minnesota,<sup>6</sup> nor did it own, lease, or use any real property in the State of Minnesota, or lease any tangible personal property located in the State of Minnesota.<sup>7</sup> Before September 25, 2013, however, Uline operated a distribution center in Eagan, Minnesota (the “Eagan Branch”). The Eagan Branch served Uline’s customers located in Minnesota and neighboring states.<sup>8</sup> Uline ceased operations at the Eagan Branch in September 2013 when the building was sold to a third-party.<sup>9</sup> In or around September 2013, Uline opened a distribution facility in Wisconsin, located at 3325 Heiser Street in Hudson (the “Hudson Branch”), which served as Uline’s primary distribution center serving Uline’s Minnesota customers during the Years at Issue.<sup>10</sup> Orders obtained by Uline’s Minnesota sales representatives were submitted to the Hudson Branch for acceptance,<sup>11</sup> and subsequently shipped to Minnesota customers via common carrier from the Hudson Branch.<sup>12</sup>

---

<sup>4</sup> Stip. ¶ 9.

<sup>5</sup> Stip. ¶ 8.

<sup>6</sup> Stip. ¶ 10.

<sup>7</sup> Stip. ¶ 11.

<sup>8</sup> Stip. ¶¶ 12-13.

<sup>9</sup> Stip. ¶ 14.

<sup>10</sup> Stip. ¶ 15.

<sup>11</sup> Stip. ¶ 66.

<sup>12</sup> Stip. ¶ 67.

**A. Uline Sales Representatives**

Uline employed sales representatives who called on and visited its Minnesota customers. Some of the sales representatives who had responsibility for Minnesota customers were Minnesota residents.<sup>13</sup> During the Years at Issue, Uline employed approximately 24 sales representatives whose territories included Minnesota customers,<sup>14</sup> and who were expected to manage up to 7,000 accounts on average. Sales representatives were expected to visit 25 customers per week.<sup>15</sup>

Depending on the needs of the customer, sales representatives visited each Minnesota customer anywhere from one to four times per year.<sup>16</sup> Sales representatives use their own vehicles to travel to customer visits,<sup>17</sup> which generally lasted 40-45 minutes.<sup>18</sup> In addition, sales representatives located in the Twin Cities attended meetings at the Hudson Branch on Mondays and then were in the field the rest of the week;<sup>19</sup> remote sales representatives located outside of the Twin Cities metropolitan area traveled to the Hudson Branch once per month.<sup>20</sup>

During customer visits, sales representatives solicited orders of Uline products<sup>21</sup> as well as

---

<sup>13</sup> Stip. ¶ 12.

<sup>14</sup> Stip. ¶¶ 52, 108-09; Ex. J21-J22 (organizational chart of Uline's Sales Department as of 2014 and 2015).

<sup>15</sup> Stip. ¶¶ 53-54; Ex. J5.

<sup>16</sup> Stip. ¶ 56.

<sup>17</sup> Stip. ¶ 57.

<sup>18</sup> Stip. ¶ 55.

<sup>19</sup> Stip. ¶ 58.

<sup>20</sup> Stip. ¶ 59.

<sup>21</sup> Stip. ¶ 60.

providing Uline product samples and demonstrations free of charge.<sup>22</sup> Sales representatives carried a stock of samples in their personal vehicles.<sup>23</sup> They also toured customer facilities to better understand the customer’s shipping and supply needs.<sup>24</sup> Customers could place orders through Uline’s website or by calling Uline’s customer service department,<sup>25</sup> but also placed “on the spot” orders with sales representatives during customer visits. In that instance, sales representatives placed orders on behalf of customers during or after the sales call by contacting a sales administrative assistant or customer service representative.<sup>26</sup> Sales representatives had authority to quote prices for customer orders, and to offer special discounts from Uline’s standard price within a specified range, although discounts beyond the authorized price range required manager approval.<sup>27</sup> They did not investigate credit worthiness of customers, make decisions extending credit, or perform any collection activities.<sup>28</sup> Nor did they repair damaged products or perform installation or maintenance services. If a Minnesota customer required repair services, Uline performed those services at the Hudson Branch.<sup>29</sup> Sales representatives did not hire, train, or supervise other Uline employees other than sales representatives,<sup>30</sup> nor did they conduct training courses, seminars, or lectures in Minnesota.<sup>31</sup>

---

<sup>22</sup> Stip. ¶ 61.

<sup>23</sup> Stip. ¶ 62.

<sup>24</sup> Stip. ¶ 72.

<sup>25</sup> Stip. ¶ 63.

<sup>26</sup> Stip. ¶ 64.

<sup>27</sup> Stip. ¶ 65.

<sup>28</sup> Stip. ¶ 68.

<sup>29</sup> Stip. ¶ 69.

<sup>30</sup> Stip. ¶ 70.

<sup>31</sup> Stip. ¶ 71.

## 1. Documentation of Customer Visits

Sales representatives prepared two types of documentation regarding customer visits: Sales Notes and Market News Notes.<sup>32</sup> Sales Notes, also known as Call Sheet Notes, record the date and time of a customer visit and summarize pertinent information about the customer's business, its product needs, and other helpful information about key customer contacts.<sup>33</sup> Sales representatives were expected to enter a Sales Note for every customer visit,<sup>34</sup> generally summarizing the customer visit and sometimes also noting what customers are buying from Uline competitors.<sup>35</sup>

Market News Notes document information sales representatives collected from customers, such as information about their special delivery needs, bulk pricing requests, complaints about product or service quality, needs for certain products, and what products customers are buying from Uline competitors.<sup>36</sup> They also document information sales representatives obtained from customers about Uline's competitors, including detailed product information such as manufacturer and brand, competitors' product pricing, product lead time, payment terms, annual rebates, and discounts.<sup>37</sup> The sales representative training manual sets forth Uline's guidance concerning Market News Notes.<sup>38</sup> These notes were organized by topic—Competitor, Operational, and

---

<sup>32</sup> Stip. ¶¶ 73, 88; Ex. J9 (spreadsheet containing data collected from Sales Notes and Market News Notes created by Uline sales representatives relating to Minnesota customers during the Years at Issue; describing process of creating spreadsheet).

<sup>33</sup> Stip. ¶¶ 83-84; Ex. J8 (examples of Sales Notes); Stip. ¶¶ 98-101; Exs. J11-J14 (spreadsheets showing details of the vast majority of customer visits by Uline sales representatives, as well as identifying all Uline sales representatives and each of their respective sales territories for 2014 and 2015).

<sup>34</sup> Stip. ¶ 85.

<sup>35</sup> Stip. ¶¶ 83, 86-87.

<sup>36</sup> Stip. ¶¶ 74, 77; Ex. J6 (example of one sales representative's Market News Notes from 2014).

<sup>37</sup> Stip. ¶ 75.

<sup>38</sup> Stip. ¶ 78; Ex. J7 (excerpt from training manual section 8.4, "Market News Notes").

Marketing—to denote the nature of the information.<sup>39</sup> Sales representatives did not prepare Market News Notes for every customer visit, but the goal of each sales representative was to generate two Market News Notes per week.<sup>40</sup> For 2014-15 together, the parties provided a spreadsheet showing 1610 Market News Notes.<sup>41</sup> Market News Notes were entered into a Uline sales department database,<sup>42</sup> which was accessible by Uline employees in the sales department and other departments.<sup>43</sup>

In addition to preparing Sales Notes and Market News Notes, sales representatives could enter a Quality Control (QC) Ticket on Uline’s internal website to document customer concerns or complaints.<sup>44</sup> Customer concerns or complaints submitted on QC Tickets were then investigated and resolved by Uline’s customer service department, merchandising department, or warehouse staff, as necessary.<sup>45</sup> Sales representatives were permitted to follow-up with the customer by email or phone to ensure that the complaint or concern was addressed.<sup>46</sup>

## **2. Product Returns**

Uline generally accepted customer returns made within 30 days of a purchase.<sup>47</sup> The sales representative training manual (the “training manual”) sets forth its policy for customer returns.<sup>48</sup>

---

<sup>39</sup> Stip. ¶ 76.

<sup>40</sup> Stip. ¶ 82.

<sup>41</sup> Ex. J9 (Market News Notes 2014-2015 tab).

<sup>42</sup> Stip. ¶ 79.

<sup>43</sup> Stip. ¶ 80.

<sup>44</sup> Stip. ¶ 89.

<sup>45</sup> Stip. ¶ 90.

<sup>46</sup> Stip. ¶ 91.

<sup>47</sup> Stip. ¶ 92.

<sup>48</sup> Stip. ¶ 93; Ex. J10 (excerpt from training manual section 8.15 on returns).

The training manual provided that both “sales admins” and “customer service” were responsible for the procedures,<sup>49</sup> and directed sales representatives to “obtain the following information before calling your admin to process the return,” listing certain types of required information identifying the customer, the item to be returned, and the reason for return.<sup>50</sup>

Customers could initiate a return by directly contacting the customer service department in the Hudson Branch.<sup>51</sup> Alternatively, sales representatives could assist the customer with setting up a return with the customer service department (presumably, the “customer service” described in the training manual).<sup>52</sup> Either way, the Hudson Branch had a dedicated returns group in the warehouse to receive product returns and process customer credits.<sup>53</sup> When a customer submitted a return request to the customer service department, the customer service department sent a shipping label to the customer and arranged for a third-party parcel or freight carrier to pick up the product.<sup>54</sup> Shipping costs were the responsibility of either Uline or the customer, depending on the reason for the return.<sup>55</sup> Under the procedure in the training manual, if the product was defective or damaged, or Uline provided the incorrect product, Uline provided a pre-paid return shipping label at its cost.<sup>56</sup> If a customer requested to return an order for other reasons (such as ordering the wrong

---

<sup>49</sup> Ex. J10.

<sup>50</sup> Ex. J10.

<sup>51</sup> Stip. ¶ 95. *See also* Stip. ¶¶ 102-03; Exs. J15-J16 spreadsheets showing details of various customer product returns to the Hudson Branch in 2014 and 2015).

<sup>52</sup> Stip. ¶¶ 92-93, 96; Ex. J10.

<sup>53</sup> Stip. ¶ 95. *See also* Stip. ¶¶ 102-03; Exs. J15 -J16.

<sup>54</sup> Stip. ¶¶ 96-97.

<sup>55</sup> Stip. ¶ 97.

<sup>56</sup> Stip. ¶ 94.



product or later deciding they did not want the product), Uline required the customer to pay the cost of shipping to return the product.<sup>57</sup>

The procedure as set forth in the training manual does not expressly authorize sales representatives to collect and personally transport returned items, nor does it specifically prohibit them from doing so. The parties agree that, “[o]n occasion, Uline sales representatives agreed to personally take and return items purchased by Minnesota customers from the customer location back to Uline’s Hudson Branch located in Hudson, Wisconsin, provided the item would fit in the sales representative’s vehicle.”<sup>58</sup> On ten such occasions during the Years at Issue, a Uline sales representative accepted and returned to the Hudson Branch a Minnesota customer’s purchased item.<sup>59</sup> The parties disagree whether these returns were consistent with, or contrary to, Uline corporate policy, and they did not agree that the procedure in the sales representative training manual prohibited sales representatives from personally transporting customer items as a matter of policy.<sup>60</sup>

## **B. Job Fairs**

Through its human resources personnel,<sup>61</sup> Uline participated in ten Minnesota job fairs hosted by Minnesota colleges and universities for one day each time during the Years at Issue.<sup>62</sup>

---

<sup>57</sup> Stip. ¶ 94.

<sup>58</sup> Second Stip. Facts. ¶ 1 (filed Mar. 24, 2023).

<sup>59</sup> Second Stip. ¶ 2. See also Tr. 19-20 (observing that 16 personally transported returns would have represented approximately .06 percent of all returns during that time period).

<sup>60</sup> Appellant’s Mem. Law Supp. Mot. Summ. J. 22-26 (filed Dec. 16, 2022); Comm’r’s Mem. Law Supp. Mot. Partial Summ. J. 28-29 (filed Dec. 16, 2022); Comm’r’s Mem. Law Opp’n Mot. Summ. J. 6-7 (filed Jan. 13, 2023). The Commissioner does not appear to contend that Uline’s general returns policy, in which the customer service department in the Hudson branch communicates directly with the customer, establishes nexus with Minnesota.

<sup>61</sup> Stip. ¶¶ 29-30 (identifying specific Uline employees).

<sup>62</sup> Stip. ¶ 31 (identifying dates and locations of job fairs).

Uline's Hudson Branch Manager testified that human resources personnel participated in these job fairs because some of the positions required a college degree.<sup>63</sup> At these Minnesota job fairs, Uline recruited for internships and entry-level positions at Uline.<sup>64</sup> In addition to recruiting sales representatives and sales interns, Uline also recruited customer service representatives, and warehouse managers and management trainees, which are non-sales positions.<sup>65</sup> Except for sales representative positions covering territories including Minnesota, Uline did not recruit for positions located in Minnesota at these Minnesota job fairs,<sup>66</sup> but for jobs located in Wisconsin at the Hudson Branch or Uline Headquarters.<sup>67</sup>

At the job fairs, Uline employees provided students with general information about Uline and the open positions for which Uline was accepting applications,<sup>68</sup> giving out business cards, distributing brochures containing general information about Uline and its open positions.<sup>69</sup> Uline neither conducted interviews in Minnesota, nor did it accept job applications at Minnesota recruiting fairs.<sup>70</sup> Rather, application review, interviews, and hiring decisions for non-sales personnel occurred in Wisconsin at the Hudson Branch or Uline Headquarters.<sup>71</sup>

---

<sup>63</sup> Decl. Jennifer A. Kitchak (signed Dec. 16, 2022) ¶ 3 & Ex. C-4 ,at 97-98 (deposition testimony of Tyrone Beucler).

<sup>64</sup> Stip. ¶ 32.

<sup>65</sup> Stip. ¶¶ 33-34.

<sup>66</sup> Stip. ¶ 34.

<sup>67</sup> Stip. ¶ 34.

<sup>68</sup> Stip. ¶ 35.

<sup>69</sup> Stip. ¶¶ 36-38 & Exs. J3-J4 (internship and recruiting brochures).

<sup>70</sup> Stip. ¶¶ 39-40.

<sup>71</sup> Stip. ¶ 42; Ex. J4 (requesting that applicants apply to the address associated with the Hudson Branch or online).

**C. Richard (Duke) Uihlein, Jr.**

Uline is owned by six related individuals, of whom one, Richard Uihlein, Jr. (“Mr. Uihlein”), is a Minnesota resident.<sup>72</sup> Mr. Uihlein served as the branch manager of the Hudson branch until November 2013 when Tyrone Beucler assumed the role as branch manager.<sup>73</sup> Beginning at that time and continuing into 2014, Mr. Uihlein shared some branch manager duties with Mr. Beucler,<sup>74</sup> as he worked to transition Mr. Beucler into the role of branch manager.<sup>75</sup> During the Years at Issue, Mr. Uihlein was also Vice President of Uline,<sup>76</sup> with his primary office at the Hudson Branch.<sup>77</sup> His main responsibility was to travel a couple times per month to other Uline locations and perform audits,<sup>78</sup> which involved formal written reviews of their operational performance.<sup>79</sup> This would involve, among other things, assessment of the warehouse staff and other personnel, financial performance, and compliance with safety regulations.<sup>80</sup>

The parties agree that although his primary office was at the Hudson Branch, Mr. Uihlein performed some of his job duties, such as answering business related emails and calls, while working from his Minnesota residence.<sup>81</sup> Mr. Uihlein used a Uline-issued iPad and a personal

---

<sup>72</sup> Stip. ¶¶ 5-6.

<sup>73</sup> Stip. ¶ 43.

<sup>74</sup> Stip. ¶ 43.

<sup>75</sup> Stip. ¶¶ 43 & 46 (stipulating that this transition continued into the Years at Issue).

<sup>76</sup> Stip. ¶ 44.

<sup>77</sup> Stip. ¶ 47.

<sup>78</sup> Stip. ¶ 44.

<sup>79</sup> Stip. ¶ 45.

<sup>80</sup> Stip. ¶ 45.

<sup>81</sup> Stip. ¶¶ 47-51.

iPhone at his Minnesota residence to check business related messages.<sup>82</sup> Mr. Beucler, his successor as Hudson Branch manager,<sup>83</sup> sometimes called Mr. Uihlein regarding business related matters.<sup>84</sup> His home address and phone number are private, however, and not generally made known to Uline employees, customers, or the public.<sup>85</sup> Mr. Uihlein did not claim tax deductions on his state or federal income tax returns for home office or related expenses.<sup>86</sup>

#### **D. Tax Order and Appeals**

Uline filed a final S corporation return with the State of Minnesota for the 2014 tax year,<sup>87</sup> claiming that it was exempt from Minnesota income or franchise tax pursuant to Minnesota Statutes section 290.015, subdivision 3(a), and United States Public Law 86-272 (“P.L. 86-272”), codified as 15 U.S.C. §§ 381-384 (2022) (as a whole, the “ITCA”).<sup>88</sup> Uline did not file a 2015 Minnesota S corporation return.<sup>89</sup> The Commissioner investigated Uline’s Minnesota business activities for the Years at Issue.<sup>90</sup> Following the investigation, the Commissioner determined that Uline was subject to the taxes imposed by Chapter 290, that its business activities in Minnesota during the Years at Issue exceeded the protections of 15 U.S.C. § 381, and that Uline was not

---

<sup>82</sup> Stip. ¶ 50. The parties do not appear to dispute that Mr. Uihlein did not maintain a Uline office from his home. Tr. 28-30.

<sup>83</sup> Stip. ¶ 43, 46.

<sup>84</sup> Stip. ¶ 51; Decl. Michael J. Kaupa (signed Dec. 16, 2022) ¶ 7 & Ex. 5, at 77-79, 218-20 (deposition testimony of Richard Uihlein, Jr.).

<sup>85</sup> Stip. ¶ 49.

<sup>86</sup> Stip. ¶ 48.

<sup>87</sup> Stip. ¶ 16.

<sup>88</sup> Stip. ¶¶ 17-18; Ex. J1.

<sup>89</sup> Stip. ¶ 19.

<sup>90</sup> Stip. ¶ 20; *see also* Stip. ¶ 106; Ex. J19 (Minnesota Business Activity Questionnaire completed by Uline, Inc. in connection with audit).

exempt from taxation by Minnesota.<sup>91</sup> The Commissioner issued a tax order and audit report (“Audit Report”), dated October 13, 2017, assessing Uline additional tax for the Years at Issue due to Uline’s alleged failure to withhold and pay nonresident withholding tax for its nonresident shareholders as required by Minnesota Statutes section 290.92, as well as additional Minimum Fees.<sup>92</sup> The Commissioner also assessed a 10 percent penalty under Minnesota Statutes section 289A.60, subdivision 5, and a 20 percent penalty for substantial understatement of tax owed under Minnesota Statutes section 289A.60, subdivision 4.<sup>93</sup>

Uline timely filed an administrative appeal of the Audit Report on December 6, 2017,<sup>94</sup> which the Commissioner denied in the Order.<sup>95</sup> In his denial, the Commissioner determined that Uline was subject to the taxes imposed by chapter 290, that its business activities in Minnesota exceeded the protections of 15 U.S.C. § 381, and that Uline was not exempt from taxation by Minnesota for the Years at Issue.<sup>96</sup> This appeal followed on September 15, 2020.<sup>97</sup>

---

<sup>91</sup> Stip. ¶ 20.

<sup>92</sup> Stip. ¶ 21.

<sup>93</sup> Stip. ¶ 21; Comm’r’s Return (filed Nov. 13, 2020) & Ex. 5. The parties agree that the 10% penalty imposed in the Order under Minnesota Statutes section 289A.60, subdivision 5, does not apply. Stip. ¶ 27.

<sup>94</sup> Stip. ¶ 22.

<sup>95</sup> Stip. ¶¶ 23-24; Ex. J2.

<sup>96</sup> Stip. ¶ 25.

<sup>97</sup> Stip. ¶ 26.

On November 13, 2022, the parties filed cross-motions for summary judgment on stipulated facts and exhibits.<sup>98</sup> This court heard oral argument on February 3, 2023<sup>99</sup> and received a Second Stipulation of Facts at its request on March 24, 2023.<sup>100</sup>

## II. APPLICABLE LAW

Minnesota Statutes section 271.06, subdivision 7 (2020), provides that, in general, the Minnesota Rules of Evidence and Civil Procedure govern the procedures in the tax court, where practicable. *Cnty. of Aitkin v. Blandin Paper Co.*, 883 N.W.2d 803, 810 (Minn. 2016) (noting application of the rules of evidence to tax court proceedings); *Piney Ridge Lodge, Inc. v. Comm’r of Revenue*, 718 N.W.2d 861, 862 n.1 (Minn. 2006) (observing both the rules of evidence and civil procedure govern in tax court proceedings). When interpreting a federal statute, this court is bound by the opinions of the United States Supreme Court and the opinions of the Minnesota Supreme Court that interpret and apply federal law. *In re Gillette Child.’s Specialty Healthcare*, 867 N.W.2d 513, 519 (Minn. App. 2015), *aff’d*, 883 N.W.2d 778 (Minn. 2016).

### A. Summary Judgment

Summary judgment is to be granted “if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01; *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 189-90 (Minn. 2019). Summary judgment “permits the court to make a prompt disposition of an action on the merits if there is no

---

<sup>98</sup> Appellant’s Not. Mot. & Mot. Summ. J. (filed Dec. 16, 2022); Appellant’s Mem. Law Supp. Summ. J.; Comm’r’s Not. Mot. & Mot. Summ. J. (filed Dec. 16, 2022); Comm’r’s Mem. Supp. Mot. Partial Summ. J.; Stip.; Exs. J1-J22. The Commissioner filed a motion for partial summary judgment because of an unresolved dispute about the amount of taxes due in the event of affirmance. Stip. ¶ 28; Comm’r’s Mem. Law Supp. 4 n.4 (describing nature of dispute over calculation).

<sup>99</sup> Tr.

<sup>100</sup> Second Stip. ¶ 2.

genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such established facts.” *In re Bush’s Est.*, 302 Minn. 188, 211, 224 N.W.2d 489, 503 (1974) (cleaned up). Summary judgment is a suitable vehicle for addressing the application of law to undisputed facts. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (noting summary judgment is proper where no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law); *Anderson v. Christopherson*, 816 N.W.2d 626, 630 (Minn. 2012); *Kimberly-Clark Corp. & Subsidiaries v. Comm’r of Revenue*, No. 8670-R, 2015 WL 3843986, at \*8 (Minn. T.C. June 19, 2015), *aff’d*, 880 N.W.2d 844 (Minn. 2016).

In the event of cross-motions for summary judgment,

each party is both a moving party who bears the burden of establishing the absence of a genuine issue of material fact, and a non-moving party who bears the burden of coming forward with specific facts creating such an issue of fact. The Court must decide whether there are genuine issues of material fact present, and if not, which party is entitled to judgment as a matter of law. If the Court determines that there are genuine issues of material fact, the Court should not enter summary judgment for either party.

*W.S.A., Inc. v. Liberty Mut. Ins.*, No. CV 3-92-162, 1992 WL 544960, at \*4 (D. Minn. Sept. 30, 1992) (applying Fed. R. Civ. P. 56).<sup>101</sup> When parties file cross-motions for summary judgment, they “tacitly agree[] that there exist no genuine issues of material fact ....” *Remodeling Dimensions, Inc. v. Integrity Mut. Ins.*, 819 N.W.2d 602, 610 (Minn. 2012) (cleaned up).

---

<sup>101</sup> Minnesota Rule 56.01 and Federal Rule of Civil Procedure 56(a) are virtually identical. Where state and federal rules of procedure are identical or virtually so, federal cases interpreting the analogous federal provision are helpful. *See Johnson v. Soo Line R.R.*, 463 N.W.2d 894, 899 n.7 (Minn. 1990) (“When our rules of practice are modeled after the federal rules, federal cases interpreting the federal rule are helpful and instructive but not necessarily controlling on how we will interpret our state counterpart.”); *State by Mattson v. Boening*, 276 Minn. 151, 152, 149 N.W.2d 87, 89 (1967).

## **B. Minimum Contacts**

Minnesota Statutes section 290.015 sets forth Minnesota's statutory framework for the required minimum connection or nexus to impose corporate income tax. That section provides several standards by which an out-of-state business may be subject to Minnesota corporate taxation. At issue in this case is the part of Section 290.015, subdivision 1(a), that subjects an out-of-state entity to tax in Minnesota if it has employees who regularly conduct business in the state on the entity's behalf. In relevant part, subdivision 1(a) establishes a general rule that a person who conducts a trade or business is subject to income tax in Minnesota if the person (1) has a place of business in Minnesota; (2) regularly has employees or independent contractors conducting business on its behalf in Minnesota; (3) owns or leases real property in Minnesota; or (4) owns tangible personal property in Minnesota (subject to certain exceptions). Minn. Stat. § 290.015, subd. 1(a) (2022). Alternatively, nexus can be established if the taxpayer obtains or regularly solicits business from within Minnesota. *Id.*, subds. 1(b)-(d).

Section 290.015, subdivision 3, provides for two exceptions to the general rule in subdivision 1(a). Relevant here, subdivision 3(a) provides that a business is not subject to tax if it is engaged in the sale of tangible personal property, "and taxation ... under this chapter is precluded by Public Law 86-272, United States Code, title 15, sections 381 to 384." Minn. Stat. § 290.015, subd. 3(a).

### **1. The ITCA**

The ITCA provides that a state cannot impose a tax on a company if its business activities in the state are limited to the solicitation of orders that are fulfilled and shipped from out of state.

In relevant part:

No State ... shall have power to impose ... a net income tax on the income derived within such State by any person from interstate commerce if the only business



activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

15 U.S.C. § 381(a).

Congress enacted the ITCA shortly after the Supreme Court's decision in *Nw. States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 79 S. Ct. 357, 3 L.Ed.2d 421 (1959), and two denials of certiorari based on the *Nw. States* decision. *Brown-Forman Distillers Corp. v. Collector of Revenue*, 234 La. 651, 101 So.2d 70 (1958), *cert. denied*, 359 U.S. 28, 79 S. Ct. 602, 3 L.Ed.2d 625 (1959) and *Int'l Shoe Co. v. Fontenot*, 236 La. 279, 107 So.2d 640 (1958), *cert. denied*, 359 U.S. 984, 79 S. Ct. 943, 3 L.Ed.2d 933 (1959). *See* S. Rep. No. 658, 86th Cong., 1st Sess., 2 (1959) (citing "considerable concern and uncertainty" over the notion that solicitation of interstate sales alone could subject a business to a state's income tax). In *Nw. States*, the Supreme Court upheld state income taxes imposed on interstate corporations based on the activities of their travelling salespeople. The purpose of the ITCA was to define a "'lower limit' for the exercise of state taxing power" in light of *Nw. States*. *Wisconsin Dep't of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 223, 112 S. Ct. 2447, 2453, 120 L.Ed.2d 174 (1992). Section 381(a)(1)<sup>102</sup> protects the direct solicitation of orders by an out-of-state business. Section 381(a)(2) protects an activity referred to

---

<sup>102</sup> All subsequent references to "section 381" are to 15 U.S.C. § 381.

as missionary sales—solicitation of ultimate consumers on behalf of a third-party retailer, who will eventually place an order to replenish their inventory. *Id.* at 233-34, 112 S. Ct. at 2453-54.

## 2. *Wrigley*

The Wrigley chewing gum company challenged Wisconsin’s income tax on the ground that its activities in Wisconsin were limited to “solicitation of orders” within the meaning of section 381. In interpreting section 381, the Court acknowledged that the “minimum standard” for imposition of a state net-income tax based on solicitation of interstate sales was “somewhat less than entirely clear,” and addressed two primary sources of confusion: (1) the scope of the term “solicitation of orders” and (2) whether there is a de minimis exception to activity exceeding the scope of the ITCA’s protected activity. *Id.* at 223, 112 S. Ct. at 2453.

The Court articulated the standard for “solicitation of orders” as follows:

Once it is acknowledged, as we have concluded it must be, that “solicitation of orders” covers more than what is strictly *essential* to making requests for purchases, the next (and perhaps the only other) clear line is the one between those activities that are *entirely ancillary* to requests for purchases—those that serve no independent business function apart from their connection to the soliciting of orders—and those activities that the company would have reason to engage in anyway but chooses to allocate to its in-state sales force.

*Id.* at 228-29, 112 S. Ct. at 2456.

Wrigley engaged in several activities in Wisconsin that the Court determined were either essential or entirely ancillary to requests for purchases. It provided a company car for use in Wisconsin; in-state recruitment, training, and evaluation of sales representatives; it used Wisconsin hotels and homes for sales-related meetings; and the regional manager occasionally mediated credit disputes between the Chicago office and important Wisconsin accounts. The Court concluded that the training and sales meetings were entirely ancillary as they “served no purpose apart from their role in facilitating solicitation.” *Id.* at 234, 112 S. Ct. at 2458. The purpose of

credit mediation was to “ingratiate the salesman with the customer, thereby facilitating requests for purchases.” *Id.* at 235, 112 S. Ct. at 2459.

In determining these activities were immune under section 381, the court declined to draw a strict distinction between pre-sale and post-sale activities. “[M]anufacturers and distributors ordinarily have ongoing relationships that involve continuous sales, making it often impossible to determine whether a particular incidental activity was related to the sale that preceded it or the sale that followed it.” *Id.* at 230-31, 112 S. Ct. at 2457 (describing a pre- and post-sale distinction as “hopelessly unworkable”). The Court concluded, however, that Wrigley engaged in other activities that were not entirely ancillary to the solicitation of orders and that accordingly fell outside the protection of section 381. *Id.* at 233-35, 112 S. Ct. at 2459-60. Specifically, the Court determined that replacement of stale gum, the supplying of gum through “agency stock checks,” and the storage of gum were not entirely ancillary to solicitation of orders. *Id.* at 234-35, 112 S. Ct. at 2459-60 (observing that supplying gum through stock checks was not ancillary because customers were required to pay for the gum). “It is not enough that the activity facilitate sales; it must facilitate the requesting of sales, which [gum replacement] did not.” *Id.* at 233, 112 S. Ct. at 2459.

With respect to activities that were not immune under section 381(a), the Court also held that a de minimis exception applies. *Id.* at 231-32, 112 S. Ct. at 2457-58. Whether unprotected activity exceeds de minimis levels “depends upon whether that activity establishes a nontrivial additional connection with the taxing State,” *Id.* at 232, 112 S. Ct. at 2458, and nonimmune activities are considered together as a whole rather than in isolation. *Id.* at 235, 112 S. Ct. at 2459-60. The importance of these activities need not be measured in either absolute or relative dollars. *Id.* Accordingly, even though Wrigley’s sales through agency stock checks accounted for only .000007% of its annual Wisconsin sales, the Court determined that the exchange of stale gum, the

agency stock checks, and maintenance of a stock of gum for these purposes established a nontrivial connection to Wisconsin when taken together. *Id.* (noting that stale gum exchanges took place under company policy and on a continuing basis).

### 3. After *Wrigley*

Cases involving disputes under section 381 have arisen only infrequently since *Wrigley*, but a number of courts have applied the *Wrigley* test to determine whether certain specific activities relevant to this case are entirely ancillary to solicitation of orders (and thus immune under section 381) or are neither ancillary nor de minimis. With respect to recruiting and hiring, this court decided, in *Scott Fetzer Co. v. Commissioner of Revenue*, that to the extent its distributors hired, supervised, and trained independent dealers in this state, the manufacturer of Kirby vacuum cleaners was engaged in activities entirely ancillary to its sales in Minnesota. No. 8725-R, 2016 WL 916253, at \*28 (Minn. T.C. Mar. 8, 2016). This court relied on *Wrigley* for the proposition that “in-state recruitment, training, and evaluation of sales representatives and its use of hotels and homes for sales-related meetings served no purpose apart from their role in facilitation solicitation [of sales].” *Id.* at \*28 (quoting *Wrigley*, 505 U.S. at 235).

In addition to addressing hiring of sales personnel, several courts have determined, on the specific facts presented, that the act of picking up items from an in-state customer, and returning those items to an out-of-state corporate headquarters, is not entirely ancillary and is not immune. *See Santa Fe Nat. Tobacco Co. v. Dep’t of Revenue*, No. TC 5372, 2022 WL 3647621, at \*14 (Or. T.C. Aug. 23, 2022) (where tobacco distributor maintained a satisfaction and return guarantee with Oregon wholesalers, requiring acceptance of product returns from Oregon retailers, returns to wholesalers under the policy were not entirely ancillary to “making sales”); *Chester A. Asher, Inc. v. Dir., Div. of Tax’n*, 22 N.J. Tax 582, 596-97 (2006) (where candymaker’s delivery drivers picked up product from customers for return as a matter of policy, activity was not entirely solicitation;

relying on *Wrigley*); *Peterson v. State Tax Assessor*, 724 A.2d 610, 613, (Me. 1999) (where New Jersey dental supply partnership picked up items from customers in Maine, among other activities, its activities “all are in furtherance of good customer relations,” but “do not constitute solicitation of orders, whether as requests for purchases or activities ancillary thereto”) (internal quotation marks omitted).<sup>103</sup> Although each of these holdings was fact-specific, the rationale was the same in each case. Product return is a business activity that exists independently of any sales activity, and although personally transporting returns may help facilitate sales in general, it did not help “facilitate the requesting of sales.” *Chester A. Asher*, 22 N.J. Tax at 596 (quoting *Wrigley*, 505 U.S. at 232).

Similarly, courts including this one have held that preparation and submission of weekly reports concerning the activities of competitors was not for purposes of reordering or continuously ordering products, but rather for inventory management or quality control, and served a business purpose apart from solicitation of orders. *Skagen Designs, Ltd. v. Comm’r of Revenue*, No. 8168-R, 2012 WL 1450008, at \*4 (Minn. T.C. Apr. 23, 2012) (where preparation of such reports allowed watch manufacturer to collect valuable market data as well as forecast sales of its competitor’s products as well as its own, the activity was not ancillary). Similarly, this court determined that the creation of floor maps showing a taxpayer’s displays in juxtaposition with its competitor’s products was not ancillary to requesting purchases, as the record did not demonstrate that retailers saw the floor maps, or that the floor maps were used to “advise” the retailers on how to display their own products for sale to consumers.<sup>104</sup> The preparation of such floor maps could not be

---

<sup>103</sup> See also *Procacci Bros. Sales Corp. v. Dir., Div. of Tax’n*, No. 015626-2014, 2021 WL 2154704, at \*9 (N.J. Tax Ct. May 25, 2021) (unpublished) (where produce distributor regularly retrieved produce which had already been accepted by the buyer rather than rejected before acceptance under applicable federal law, activity was not entirely ancillary to solicitation).

<sup>104</sup> *Id.* at \*5.

converted into solicitation “merely because it was ‘display-related.’” *Id.* at \*5-6. Likewise, in *Blue Buffalo Co. Ltd. v. Comptroller of Treasury*, the court considered the activities of so-called “Pet Detectives,” akin to sales representatives, as well as account managers for a pet food manufacturer. 243 Md. App. 693, 700-01, 221 A.3d 1130, 1134 (2019). Among these activities were the periodic provision of information regarding market opportunities and competitor activities in routine reports.<sup>105</sup> *Id.* The court characterized information about competitive advantage as “a business objective distinct from the solicitation of orders.” *Blue Buffalo*, 243 Md. App. at 712, 221 A.3d at 1141.

The *Blue Buffalo* court also considered the activities of the Pet Detectives in gathering complaint information from customers attempting to return their products. Pet Detectives were instructed to report these complaints to Blue Buffalo’s corporate headquarters, among other responsibilities. *Blue Buffalo*, 243 Md. App. at 711, 221 A.3d at 1141. Applying the *Wrigley* analysis concerning dispute mediation, the court found that a salesperson’s “reporting of complaints is entirely analogous to this mediating function” and therefore ancillary to solicitation, as it ingratiate the customer and facilitates continued requests for purchases. *Blue Buffalo*, 243 Md. App. at 712, 221 A.3d at 1141 (citing *Wrigley*, 505 U.S. at 235, 112 S. Ct. 2447 and *Alcoa Bldg. Products, Inc. v. Comm’r of Revenue*, 440 Mass. 224, 228, 797 N.E.2d 357, 361 n.2 (2003) (distinguishing between in-state resolution of complaints, and merely passing complaints to home office)). The court observed that reporting complaints to an out of state corporate office within the immunity of section 381 “is good policy and accords with common sense: It would be unreasonable to expect salespeople to ignore customers seeking to return defective products, and

---

<sup>105</sup> These reports detailed sales, pet visits, and hours worked at each store, and occasionally included comments on customer interactions, product suggestions, the activities of competitors, and issues encountered on the job. *Blue Buffalo*, 243 Md. App. at 701, 221 A.3d at 1134.

it would be deleterious to discourage employees from reporting these complaints on threat of taxation.” *Id.*

Where courts have determined an activity to be non-ancillary, they have engaged in the further analysis whether the activity, or multiple non-ancillary activities taken together, are nonetheless de minimis. In *Blue Buffalo*, the court concluded the company’s non-ancillary activities, taken together, were not de minimis. Although fewer than one percent of the total comments in the Pet Detectives’ routine reports mentioned or referenced Blue Buffalo’s competitors in any form, Account Managers submitted reports that were “a function of her job responsibilities and a regular incident of her discussions with retailers,” which were “carried out on a regular basis as a continuing matter of company policy.” 243 Md. App. at 714-16, 221 A.3d at 1142-43 (noting that these ranged from comments on the inventory status of competitive products to detailed insights into competitors’ marketing strategies).

### III. ANALYSIS

The question before the court is whether the Commissioner correctly determined that Uline is subject to tax because its Minnesota business activities went beyond solicitation of sales under section 381, and were not de minimis, forming a non-trivial connection with the state under Minnesota Statutes section 290.015. The parties stipulated to all material facts concerning Uline’s business activities in Minnesota.<sup>106</sup> The court agrees with the parties that the issues are ripe for summary judgment.

The parties agree that Uline, through its employees, engaged in several activities in Minnesota. Broadly categorized, these include activities not performed by sales representatives, and those performed by sales representatives. The first category includes personnel from the

---

<sup>106</sup> Stip.; Second Stip.

Hudson Branch participating in job fairs for non-sales positions; and Mr. Uihlein's conduct of business other than solicitation of orders from his Minnesota residence. The latter category includes sales personnel picking up defective merchandise from Minnesota customers and returning it to the Hudson Branch; sales personnel collecting and reporting to the Hudson Branch information about customer complaints; and sales personnel collecting and reporting to the Hudson Branch information about competitors' practices. Uline contends that each of these activities is immune under section 381 because it is ancillary to its sales solicitations in this state, and that if not immune, took place on an incidental basis only and is de minimis. The Commissioner disagrees that any of these activities is immune and further contends that, taken together, they establish a non-trivial connection to Minnesota even if each one, considered independently, is de minimis. The court will evaluate each of these activities separately.

The court concludes that although the Commissioner erroneously determined that several of Uline's business activities exceeded the immunity provided in section 381, he correctly determined that its practice that sales representatives collect and report market data concerning competitors on a twice-monthly basis at minimum was not ancillary to sales in Minnesota, but rather was a function of the representatives' job duties and a matter of Uline's corporate policy. Furthermore, this degree and frequency of collection and reporting was not de minimis and established a taxable presence in Minnesota. On this basis, the Commissioner's motion is granted and Uline's motion is denied.



## A. Activities Not Performed by Sales Personnel<sup>107</sup>

### 1. Job Fairs

Uline contends that the occasional presence of employees in Minnesota for the sole purpose of recruiting at job fairs is not a business activity that subjects Uline to the state's taxing jurisdiction, as recruiting does not constitute "doing business."<sup>108</sup> The Commissioner, citing *Wrigley*, contends that although in-state recruitment, training and evaluation of salespeople are immune under section 381, 505 U.S. at 235, 112 S. Ct. at 2460, those activities are not immune with respect to non-sales personnel.<sup>109</sup> The court agrees with Uline that providing information in Minnesota to prospective employees, without further interviewing or hiring activities, does not constitute "conduct[ing] a trade or business" for purposes of establishing minimum contacts under section 290.015, subdivision 1.

In both *Wrigley* and *Scott Fetzer*, both the Supreme Court and this court considered whether in-state recruitment, training, and evaluation of sales representatives or independent dealers were activities entirely ancillary to facilitating solicitation of sales. *Wrigley*, 505 U.S. at 234, 112 S. Ct. at 2459; *Scott Fetzer*, 2016 WL 916253, at \*28 (holding that, to the extent its distributors hired, supervised, and trained independent dealers in this state, the manufacturer of Kirby vacuum cleaners was engaged in activities entirely ancillary to its sales in Minnesota). Although the

---

<sup>107</sup> This distinction between sales and non-sales personnel is solely for purposes of organizing this order and does not constitute a determination that a business activity is immune (or not) by virtue of the employee performing it.

<sup>108</sup> Appellant's Mem. Law Supp. 32-33 (contending that the Commissioner's position would strongly discourage potential employers from visiting college campuses in Minnesota).

<sup>109</sup> Comm'r's Mem. Law Supp. 29-30 (referencing Kitchak Decl. ¶ 7 & Ex. C-8, at 4-7 (Statement of Information Concerning Practices of Multistate Tax Commission and Supporting States Under Public Law 86-272 (4th Rev. Aug. 4, 2021) (including "[h]iring, training, or supervising personnel, other than personnel involved only in solicitation" as in-state activities not protected under the ITCA)) (the "MTC Statement").

Commissioner suggests the court must reach the opposite conclusion from *Wrigley* by way of negative inference concerning recruitment of non-sales personnel,<sup>110</sup> this court declines to do so on the facts presented.

Uline did not receive applications from job candidates, conduct interviews, or make hiring decisions in this state.<sup>111</sup> Instead, Uline only provided information in the form of written materials and informational (non-hiring) interviews; to be considered for employment in a non-sales position, applicants had to apply to the address associated with the Hudson Branch or online,<sup>112</sup> and hiring activities took place there.<sup>113</sup> Furthermore, non-sales personnel were hired for jobs in Wisconsin, not Minnesota.<sup>114</sup> Providing job information to prospective non-sales employees, even if Uline was physically present in Minnesota for that purpose, does not constitute the “conduct of business” for minimum contacts purposes. *See* Minn. Stat § 290.015, subd. 1(a) (requiring the conduct of business activities). Uline human resources employees were not present in Minnesota to engage in any transactions; they only handed out pamphlets and conducted brief informational interviews with employment prospects.

Moreover, Uline human resources employees made only ten visits to Minnesota for job fair purposes during the two Years at Issue.<sup>115</sup> Section 290.015, subdivision 1(a), also requires that employees present in this state conduct business activities “regularly.” *Id.*; *see also* *Scott Fetzer*, 2016 WL 916253, at \*26 (two visits to Minnesota by employee in a single year does not amount

---

<sup>110</sup> Comm’r’s Mem. Law Supp. 29-30, 32; Tr. 56-57.

<sup>111</sup> Stip. ¶¶ 39-40, 42.

<sup>112</sup> Ex. J4.

<sup>113</sup> Stip. ¶ 42.

<sup>114</sup> Stip. ¶ 34.

<sup>115</sup> Stip. ¶ 31.

to the “regular” conduct of business in Minnesota under section 290.015, subdivision 1(a)). The Commissioner’s own guidance in the sales tax context provides that Uline’s presence in Minnesota for the purposes of providing information to prospective job applicants is not sufficient to establish nexus with the state, where Uline is not in the business of recruiting workers. *Cf.* Rev. Not. 00-10 (Nov. 6, 2000) (as amended by Rev. Not. 02-20 (Dec. 2, 2002)) (providing examples of “business activity” and stating that holding recruiting or hiring events in Minnesota generally is “not considered when determining whether an out-of-state business has nexus with Minnesota” for purposes of the requirement to collect and remit sales tax).<sup>116</sup>

## **2. Mr. Uihlein’s work from home**

Uline contends that, under Minn. Stat. § 290.015, subd. 1(a), jurisdiction requires that employees “regularly” perform business activities in Minnesota and Mr. Uihlein’s activities were neither frequent or regular, nor did he maintain an “in-home office.”<sup>117</sup> The Commissioner contends maintaining an in-home office in the state is protected activity only if two factors are met: 1) the office is [sic] publicly attributed to the business or to the employee; and 2) the use of the office is limited to soliciting and receiving orders from customers, for transmitting orders outside the state for acceptance or rejection by the business, or for such other activities that are protected under the ITCA.<sup>118</sup> Because the parties stipulated that Mr. Uihlein’s job responsibilities

---

<sup>116</sup> *See also* Mich. Rev. Admin. Bull. No. 2014-5 (Jan. 29, 2014) (providing that “[h]olding recruiting or hiring events” for fewer than 10 days per year is de minimis and does not establish nexus for purposes of Michigan’s corporate income tax); S.C. Rev. Rul. No. 16-11 (July 27, 2016) (providing that “hold[ing] job fairs, hiring events, or other recruiting activities for the out-of-state office” does not, by itself, establish nexus unless the taxpayer is in the business of recruiting).

<sup>117</sup> Appellant’s Mem. Law Supp. 35.

<sup>118</sup> Comm’r’s Mem. Law Supp. 30 (citing the MTC Statement, at 7, item 13). The MTC Statement generally states that an employee’s maintaining an office is not protected under the ITCA except for an in-home office of the employee that is both “*not* publicly attributed to the business” and used solely for activities protected under the ITCA. MTC Statement, at 6, item 18 (emphasis added). The Commissioner’s reference to an office that is “publicly attributed to the

comprised a number of non-sales matters,<sup>119</sup> the Commissioner contends his performance of job duties from home is not protected by section 381.<sup>120</sup>

Taken together, these facts do not demonstrate that Mr. Uihlein maintained an in-home office of Uline. In *Ringgold Coal Mining Co. v. Tax'n Div. Dir.*, 4 N.J. Tax 321 (1982), the New Jersey tax court determined that the corporate taxpayer, Ringgold, had sufficient nexus in New Jersey for tax purposes partly on the basis of a home office in the state, and was not immune under section 381. *Id.* at 332-34 (finding “critical factors” to include, among other items, the presence in New Jersey of corporate-owned property including automobiles, a typewriter, file cabinet, stamps, business cards, stationery and a telephone registered in its name; and maintenance of a place to work in its vice president’s home in New Jersey). In determining that Ringgold maintained an office in New Jersey, the court determined that its vice president equipped one of the bedrooms of his residence with standard office equipment, including furniture, a business telephone line, office supplies, and stationery. Ringgold also held itself out as doing business from his home. The business telephone line, billed directly to and paid for by Ringgold was listed in the telephone directory under both Ringgold’s name and the vice president’s name. His business cards included two sets of contact information: both that business telephone line and his home address, and the company’s Pennsylvania address and telephone number. *Id.* at 323-24.

---

business,” Comm’r’s Mem. Law Supp. 30, appears to be a typographical error, but it leads to a different outcome than the plain wording of the MTC Statement.

<sup>119</sup> Stip. ¶ 45 (describing Mr. Uihlein’s responsibilities during audits as “assessment of the warehouse staff and other personnel, financial performance, and compliance with safety regulations”).

<sup>120</sup> Comm’r’s Mem. Law Supp. 30.

Although Uline provided Mr. Uihlein an iPad and a personal iPhone at his Minnesota residence to check business-related messages,<sup>121</sup> much as Ringgold provided its vice president a telephone, *id.* at 323, the record does not demonstrate that members of the public, individuals or entities doing business with Uline, or Uline’s employees other than Mr. Beucler, were able to contact Mr. Uihlein at home in any way for any reason. Nor does the record demonstrate that either members of the public or Uline’s employees identified Mr. Uihlein’s home as a Uline business location.<sup>122</sup> *Cf. Ringgold*, 4 N.J. at 324 (company affirmatively held itself out as doing business from the vice president’s home location by listing New Jersey contact information in the phone book and on business cards). Accordingly, Uline did not maintain an in-home office in Minnesota on the basis of Mr. Uihlein’s performance of some work duties while at home.

## **B. Activities Performed by Sales Personnel**

### **1. Returns**

The parties stipulated that on ten occasions during the Years at Issue, a Uline sales representative accepted and returned to the Hudson Branch a Minnesota customer’s purchased item.<sup>123</sup> Uline contends that these ten returns were entirely ancillary to solicitation as they constituted “a simple act of courtesy ‘that occurred only because a salesman happened to be on the scene,’”<sup>124</sup> and served to ingratiate Uline customers and keep them receptive to continued

---

<sup>121</sup> Kaupa Decl. ¶ 7 & Ex. 5, at 220-23. The relevance of the company-provided communications equipment in establishing corporate nexus may be substantially different today, in the era of ubiquitous mobile phones, tablets, laptops, and always-available worker expectations, than it was in 1965-71, the years at issue in *Ringgold*.

<sup>122</sup> Stip. ¶ 51.

<sup>123</sup> Second Stip. ¶ 2. See also Tr. 19-20 (observing that 16 personally transported returns would have represented approximately .06 percent of all returns during that time period).

<sup>124</sup> Appellant’s Mem. Law Supp. 22-23 (quoting *Wrigley*, 515 U.S. at 233, 112 S.Ct. at 2459 n.8).

solicitation.<sup>125</sup> Uline also contends that, even if these activities were not entirely ancillary to solicitation, they were inconsistent with company policy and occurred so infrequently that they must be considered de minimis.<sup>126</sup> The Commissioner contends that, while accepting returns may have helped facilitate general sales by providing good customer service, it did not help facilitate the requesting of sales, and accordingly was not entirely ancillary to solicitation.<sup>127</sup> Furthermore, the Commissioner contends that it was Uline's practice that sales personnel would personally return items that were small enough to fit in their car, as well as management testimony that sales representatives were encouraged to come up with "solutions" for customers, including personally returning items.<sup>128</sup>

Other courts that have considered whether assisting customers with returns from in-state have drawn a distinction between merely providing information and facilitating communication about returns, which is entirely ancillary to soliciting orders, and personally retrieving the item to be returned, which is not entirely ancillary. *See, e.g., Wrigley*, 505 U.S. at 232-33, 112 S. Ct. at 2458-59 (removal and replacement of stale gum was not entirely ancillary to solicitation as "it is not enough that the activity facilitate *sales*; it must facilitate the *requesting of sales*"); *Santa Fe*, 2022 WL 3647621, at \*14 (where tobacco distributor maintained a satisfaction and return guarantee with Oregon wholesalers, requiring acceptance of product returns from Oregon retailers, returns to wholesalers under the policy were not entirely ancillary to "making sales"); *Chester A. Asher*, 22 N.J. Tax 582, 596-97 (where candymaker's delivery drivers picked up product from

---

<sup>125</sup> Appellant's Mem. Law Supp. 23.

<sup>126</sup> Appellant's Mem. Law Supp. 10-12 (asserting that personally transported returns were against Uline policy); Appellant's Mem. Law Supp. 23-25.

<sup>127</sup> Comm'r's Mem. Law Supp. 28-29.

<sup>128</sup> Comm'r's Mem. Law Supp. 16-18 (citing deposition testimony of Uline sales personnel).

customers for return as a matter of policy, activity was not entirely to solicitation; relying on *Wrigley*); *Peterson*, 724 A.2d at 613 (where New Jersey dental supply partnership picked up items from customers in Maine, among other activities, its activities “all are in furtherance of good customer relations,” but “do not constitute solicitation of orders, whether as requests for purchases or activities ancillary thereto”) (cleaned up).<sup>129</sup> Nor is it “a behind-the[-]scenes, preparatory activity like providing basic tools (a car, or free samples) and training,” *Santa Fe*, 2022 WL 3647621, at \*14, such that it constitutes part of the course of conduct of soliciting orders. *See also Wrigley*, 505 U.S. at 225-26, 112 S. Ct. at 2455 (describing solicitation as a course of conduct rather than discrete acts).

On this basis, the court agrees with the Commissioner. The instances in which Uline sales representatives personally retrieved and transported returns from Minnesota customers to the Hudson Branch are not entirely ancillary to solicitation of orders. Product return is a business activity that exists independently of any sales activity. Although personally transporting returns is indisputably a form of good customer service and may help facilitate sales in general, and Uline contends the infrequent instances of personally-transported returns kept customers receptive to continued solicitation,<sup>130</sup> the record does not establish that it helped “facilitate the requesting of sales.” *Chester A. Asher*, 22 N.J. Tax at 596 (quoting *Wrigley*, 505 U.S. at 232, 112 S. Ct. at 2458-59). The record demonstrates that, in the instances where a sales representative made a written record of personally retrieving a return during a sales call, no written entry discusses imminent

---

<sup>129</sup> *See also Procacci Bros.*, 2021 WL 2154704, at \*9 (unpublished decision) (where produce distributor regularly retrieved produce which had already been accepted by the buyer rather than rejected before acceptance under applicable federal law, activity was not entirely ancillary to solicitation).

<sup>130</sup> Appellant’s Mem. Law Supp. 22-24.

sales in conjunction with the return,<sup>131</sup> except as a replacement for erroneous items.<sup>132</sup> In one instance, the customer expressed thanks but the note does not reflect that this ingratiation resulted in any sales.<sup>133</sup> A business activity such as product returns “cannot be converted into ‘solicitation’ by merely being assigned to sales[people].” *Wrigley*, 505 U.S. at 229, 112 S. Ct. at 2457.

## 2. Customer complaints

Uline contends that the role of sales representatives in complaint resolution was limited to communicating customer concerns to other Uline departments through Market News Notes and QC Tickets, and this served a mediation function that is ancillary to solicitation of orders.<sup>134</sup> Uline further contends that forwarding customer concerns builds goodwill with the customer,<sup>135</sup> which ingratiates the sales representative with the customer and encourages purchasing more products.<sup>136</sup> The Commissioner disagrees and characterizes these activities as quality control, describing 29 instances during the Years at Issue where sales representatives collected samples of defective merchandise and indicated they would forward the same to the Hudson Branch or “corporate.”<sup>137</sup> Rather than merely forwarding complaints, the Commissioner asserts, sales representatives also

---

<sup>131</sup> Comm’r’s Mem. Law Supp. 18-19 (excerpting items from Exhibit J9, Call Sheet Notes, for each instance in which the sales representative personally transported a return from Minnesota).

<sup>132</sup> Ex. J9, tab Call Sheet Notes 2014, lines 9431 (stating that sales representative would replace defective item), 33065 (stating that customer would order larger rubber bands to replace mistakenly ordered smaller bands); *Id.*, tab Call Sheet Notes 2015, line 15318 (stating that customer ordered incorrect item and that sales representative would place an order for the correct item).

<sup>133</sup> Ex. J9, Tab Call Sheet Notes 2014, lines 3653.

<sup>134</sup> Appellant’s Mem. Law Supp. 29-31.

<sup>135</sup> Appellant’s Mem. Law Supp. 30-31 (citing *Blue Buffalo*, 243 Md. App. at 710-12, 221 A.3d at 1140-41).

<sup>136</sup> Appellant’s Mem. Law Supp. 30 (citing *Wrigley*, 505 U.S. at 234-35, 112 S.Ct. at 2459).

<sup>137</sup> Comm’r’s Mem. Law Supp. 9-15 (table summarizing relevant Call Sheet Notes and Market News Notes entries).



investigated and attempted to resolve customer concerns or issues as an aspect of their job duties,<sup>138</sup> and while these activities may help to increase sales in a general sense, they are not ancillary to the requesting of sales.<sup>139</sup>

The court agrees with Uline that, when sales representatives documented customer complaints gleaned during customer visits for use by the Hudson Branch, and in connection with such complaints obtained samples of the items in question for evaluation by the Hudson Branch, they were engaging in an activity that was ancillary to the solicitation of sales, even if their activities extended beyond passively forwarding complaints to include obtaining samples to remit to the Hudson Branch. Although the parties dispute the characterization of the sales representatives' activities as "conduit" versus "investigation,"<sup>140</sup> and as "complaint resolution" versus "quality control"<sup>141</sup> this difference in characterization does not constitute a material issue of fact. Even viewing the 29 selected instances of conduct in the light most favorable to the Commissioner, courts that have addressed the handling of customer complaints under section 381(a)(1) have held that reporting complaints and disputes to an out-of-state corporate office is ancillary to solicitation by virtue of its role in ingratiating the customer and facilitating continued

---

<sup>138</sup> Comm'r's Mem. Law Supp. 15 (referencing Ex. J5 (sales representative position description)).

<sup>139</sup> Comm'r's Mem. Law Supp. 26-27 (citing *Wrigley*, 505 U.S. at 229-30, 112 S. Ct. at 2457).

<sup>140</sup> Appellant's Mem. Law Opp'n 2-3 (filed Jan. 13, 2023) (objecting to Commissioner's characterization of complaint resolution activities), 11 (characterizing sales representatives as "a conduit between a customer and Uline's Hudson Branch"); Kitchak Decl. ¶ 4 & Ex. C-5, at 186-87 (deposition testimony of Mr. Walker), 193-94 (testimony regarding wanting to examine samples of damaged and defective merchandise); Kitchak Decl. ¶ 5 & Ex. C-6, 121-22 (deposition testimony of Mr. Stolp regarding taking damaged product back to Hudson facility).

<sup>141</sup> Appellant's Mem. 29-31 (describing complaint resolution function); Comm'r's Mem. Law Supp. 27-28 (describing quality control function).

requests for purchases,<sup>142</sup> and “entirely analogous to [the] mediating function” described in *Wrigley. Blue Buffalo*, 243 Md. App. at 712, 221 A.3d at 1141; *Alcoa*, 440 Mass. at 228, 797 N.E.2d at 361 n.2 (distinguishing between in-state resolution of complaints, which is not ancillary, and merely passing complaints to home office).

Moreover, the act of obtaining a sample in connection with the complaint and remitting it to the Hudson Branch is an inextricable component of reporting complaints and accordingly is entirely ancillary in this context. *See Wrigley*, 505 U.S. at 225-26, 112 S. Ct. at 2455 (describing solicitation as a course of conduct rather than discrete acts). Had the sales representatives removed defective products from the customer’s inventory or stock in the nature of quality control independently of complaints made during sales calls, or personally attempted to repair or service defective products, such activities would not be entirely ancillary to solicitation of orders, as they constitute activities Uline would have engaged in independently of solicitation. *Id.* at 229, 112 S. Ct. at 2457; *Blue Buffalo*, 243 Md. App. at 711-12, 221 A.3d at 1141; *see also Kennametal, Inc. v. Comm’r of Revenue*, 426 Mass. 39, 45, 686 N.E.2d 436, 441 n.9 (1997) (where Kennametal’s sales force typically called or visited the customer to resolve problems directly, as opposed to in *Wrigley*, where “the actual resolution of the problem did not come from the sales force itself,” the act of handling disputes personally was not ancillary). The record demonstrates, however, that they

---

<sup>142</sup> “[T]he presale/postsale distinction is hopelessly unworkable ... [as] manufacturers and distributors ordinarily have ongoing relationships that involve continuous sales, making it often impossible to determine whether a particular incidental activity was related to the sale that preceded it or the sale that followed it.” *Wrigley*, 505 U.S. at 230-31, 112 S.Ct. at 2457. Accordingly, where the purpose of dispute resolution was “to ingratiate the salesman with the customer, thereby facilitating requests for purchases,” it constituted an entirely ancillary activity. *Id.* at 235, 112 S.Ct. at 2459.

did not do so.<sup>143</sup> The 29 instances the Commissioner provides in support of his position demonstrate that sales representatives only conveyed information about complaints made during sales calls to the Hudson Branch and collected samples in connection with such reports; in none of these instances did the sales representative report removing the customer's stock of the product or attempting to repair or service it personally.<sup>144</sup> Although the Commissioner characterizes these activities as "investigating and attempting to resolve customer concerns or issues and providing customer feedback,"<sup>145</sup> they do not rise to the level of personally resolving such complaints.

### 3. Market News Notes

Finally, Uline contends that the practice of obtaining information about competitors was entirely ancillary to solicitation under section 381, as its sales representatives gathered information about their existing customers only in the service of driving sales.<sup>146</sup> The Commissioner contends that market research conducted and memorialized by Uline sales representatives served a business purpose independent from Uline's solicitation of orders.<sup>147</sup> The court agrees with the Commissioner.

---

<sup>143</sup> Stip. ¶ 69 ("Sales representatives did not repair damaged products or perform installation or maintenance services. If a Minnesota customer required repair services, Uline performed those services at the Hudson Branch.").

<sup>144</sup> Comm'r's Mem. Law Supp. 9-15 (excerpting items from Exhibit J9, Call Sheet Notes and Market News Notes, for 29 instances in which the sales representative entered a report of a customer complaint and described obtaining a sample to return to the Hudson Branch).

<sup>145</sup> Comm'r's Mem. Law Supp. 15. Although the Commissioner characterizes these activities as "quality control," the record does not suggest that sales representatives or other personnel performed product sampling or other quality control activities in the absence of a specific complaint from the customer. *See* Comm'r's Mem. Law Supp. 9-15 (29 instances of complaint reporting that describe product sampling).

<sup>146</sup> Appellant's Mem. Law Supp. 26-29; Appellant's Mem. Law Opp'n 6-10.

<sup>147</sup> Comm'r's Mem. Law Supp. 24-27; Comm'r's Mem. Law Opp'n 2-5, 8-9.

As with other in-state activities in which Uline’s sales representatives participated, obtaining information about competitors’ products and business practices (including their sales techniques) is unquestionably a sound practice and necessary to increasing sales in general. But an activity that is a “promotional necessity” designed to ensure continued sales is, on its own, not ancillary to solicitation; “it is not enough that the activity facilitate *sales*; it must facilitate the *requesting of sales*.” *Wrigley*, 505 U.S. at 233, 112 S. Ct. at 2459. The record demonstrates that sales representatives prepared Market News Notes to document the products that customers are buying from competitors, including detailed product information such as manufacturer and brand, as well as competitors’ product pricing, product lead time, payment terms, annual rebates, and discounts.<sup>148</sup> Uline personnel other than sales representatives had access to that information once entered into Uline’s sales database.<sup>149</sup> Sales representatives were expected to generate two Market News Notes per week.<sup>150</sup> Each of these stipulated facts demonstrates that the preparation of Market News Notes was distinct from Uline product solicitation activity undertaken during customer calls.

On the specific facts presented, the purpose of Market News Notes was not to ingratiate the sales representative to the customer or to facilitate requests for sales—it was to facilitate sales in general. *Blue Buffalo*, 243 Md. App. at 712, 221 A.3d at 1141 (where employees provided information regarding market opportunities and competitor activities in their routine reports, such

---

<sup>148</sup> Stip. ¶¶ 74-75. Uline contends that the information sales representatives collected about competitors related to its customers’ specific needs rather than more general market research such as “conducting surveys or focus groups to better understand the forces of supply and demand within a given market.” Appellant’s Mem. Law Supp. 26 (citing *Blue Water Corp. v. O’Toole*, 336 N.W.2d 279, 280 (Minn. 1983)). The court considers whether the preparation of Market News Reports, and the content and availability of those reports to Uline personnel, is entirely ancillary to solicitation, not whether “market research” carries a specific meaning.

<sup>149</sup> Stip. ¶¶ 79-80.

<sup>150</sup> Stip. ¶ 82.

information constituted competitive research and the collection of market data, “a business objective distinct from the solicitation of orders”); *Skagen*, 2012 WL 1450008, at \* 5-6 (where weekly reports and floor maps allowed Appellant “to collect valuable market data as well as forecast sales of its competitor’s products as well as its own,” the act of collecting that information was for competitive purposes and not entirely ancillary to solicitation).<sup>151</sup>

Although the parties stipulated that sales representatives had authority to quote prices for customer orders and to offer special discounts from Uline’s standard price within a specified range,<sup>152</sup> and that Uline customers could place “on the spot” orders with sales representatives during their visits,<sup>153</sup> the record does not demonstrate that the practice of documenting market research and competitive information in Market News Notes served only this purpose. Sales representatives maintained Sales Notes of every customer visit as well,<sup>154</sup> and in addition to containing a summary of that visit, those notes also sometimes mentioned what customers are buying from competitors.<sup>155</sup> That information reasonably could determine the terms of an on-the-spot offer or a discount, and when used in that context, would be entirely ancillary to solicitation of orders. But by categorizing information as competitor, operational, or marketing<sup>156</sup>

---

<sup>151</sup> Although Uline distinguishes *Skagen* and *Blue Buffalo* because personnel other than sales representatives undertook the market research activities, Appellant’s Mem. Law Supp. 28-29, Appellant’s Mem. Law Opp’n 9-10, “[t]his semantical distinction belies the essence of the Wrigley inquiry, which turns on the nature of the activities performed by the employee, not on their title or job description.” *Blue Buffalo*, 243 Md. App at 709, 221 A.3d at 1139 n.6.

<sup>152</sup> Stip. ¶ 65.

<sup>153</sup> Stip. ¶ 64.

<sup>154</sup> Stip. ¶¶ 83-87.

<sup>155</sup> Stip. ¶ 87.

<sup>156</sup> Stip. ¶¶ 74, 76.

and making it available to Uline’s non-sales personnel<sup>157</sup> the practice of preparing Market News Notes was not limited to improving Uline’s position with respect to the requesting of sales in the context of solicitation but also to serve other purposes relating to product development and competitive pricing determinations.<sup>158</sup>

### C. De Minimis Analysis

Although two activities – personally retrieving and transporting returns and preparing Market News Notes – were not entirely ancillary to solicitation, the court must consider whether all the non-ancillary activities, taken together, were de minimis. *See Wrigley*, 505 U.S. at 235, 112 S. Ct. at 2459-60 (determining that all non-ancillary activities, considered together, were not de minimis); *Skagen*, 2012 WL 1450008, at \*7 (deciding if, taken together, the non-ancillary activities were de minimis).

Although personally collecting and transporting returns from Minnesota customers is not entirely ancillary to solicitation, the degree of the contacts resulting from such returns, on its own, is de minimis. For purposes of this de minimis analysis, the parties’ disagreement whether Uline maintained a corporate policy prohibiting sales representatives from personally transporting

---

<sup>157</sup> Stip. ¶ 80.

<sup>158</sup> Uline contends that “[p]reventing salespersons from utilizing such critically important customer information during their sales calls would severely diminish their ability to solicit orders.” Appellant’s Mem. Law Opp’n 8. But nothing in this determination prevents sales representatives, consistent with the scope of section 381, from learning information about competitors and using it within the context of a sales pitch or sales offer to a customer. As noted in the text, sales representatives maintained Sales Notes that might contain information about what customers are buying from competitors, Stip. ¶ 87, and that information might influence the pricing for on-the-spot orders and discounts. Stip. ¶¶ 64-65. The Commissioner has not alleged that preparation of these Sales Notes, even those containing information about competitors, is not immune under the ITCA.

returns, as it contends,<sup>159</sup> or whether it did not, as the Commissioner contends,<sup>160</sup> does not constitute a material issue of fact. The record does not demonstrate, and neither party contends, that Uline maintained a policy *requiring* sales representatives to personally transport returns.<sup>161</sup>

Had Uline maintained a policy that sales representatives were to pick up and personally transport returned items, any number of such returns might lead to a different conclusion. *See id.* at 235, 112 S. Ct. at 2459-60 (noting that stale gum exchanges took place under company policy and on a continuing basis and were not de minimis despite accounting for a minute percentage of sales); *Santa Fe*, 2022 WL 3647621, at \*14 (maintaining a returns policy under contract with wholesalers); *Chester A. Asher*, 22 N.J. Tax at 596 (maintaining a policy of picking up items for return). But as the parties stipulated that Uline's sales representatives personally transported only ten returns during the two Years at Issue, in the absence of evidence from either party that Uline policy required them to do so, the duration and degree of Uline's contacts resulting from these ten returns is de minimis.

---

<sup>159</sup> Appellant's Mem. Law Supp. 22-26; Appellant's Mem. Law Opp'n 3-5 (objecting to Commissioner's characterization of return activities). *See* Decl. Rebecca Tobin (signed Dec. 15, 2022) ¶ 9 (avertment of Uline's income tax lead employee that it was against Uline policy for sales representatives to accept returns); Kaupa Decl. ¶ 4 & Ex. 2, at 202-08 (deposition testimony of Tyrone Beucler); Decl. Michael J. Kaupa (signed Jan. 13, 2023) ¶ 5 & Ex. 3, at 93-94 (deposition testimony of Aaron Stolp that Uline maintained a policy that sales representatives were to contact customer service regarding returns).

<sup>160</sup> Comm'r's Mem. Law Supp. 28-29; Comm'r's Mem. Law Opp'n 6-7. *See* Decl. Jeff Fink (signed Dec. 6, 2022) ¶¶ 7, 11 & Exs. C-1 & C-2 (responses to questionnaire stating that items small enough to fit in sales representatives' vehicle would be brought back); Kitchak Decl. ¶ 5 & Ex. C-6, at 35-36 (deposition testimony of Aaron Stolp that he was unaware of any corporate policy prohibiting sales representatives from personally transporting returns).

<sup>161</sup> Kitchak Decl. ¶ 5 & Ex. C-6, at 93, 96 (deposition testimony of Aaron Stolp that he was not instructed to personally transport returns to the best of his recollection and that doing so was not consistent with Uline return policy).

The preparation of Market News Notes, however, was not a de minimis activity. Uline’s Sales Representative training manual instructed sales representatives that information they collected was important and shared with different departments at Uline.<sup>162</sup> Uline instructed sales representatives to prepare Market News Note twice a week,<sup>163</sup> and during the Years at Issue, in addition to their general sales duties, Uline’s Minnesota sales representatives together produced more than 1,600 individual Market News Notes for Uline.<sup>164</sup> *See Blue Buffalo*, 243 Md. App. at 714-16, 221 A.3d at 1142-43 (account manager reports “carried out on a regular basis as a continuing matter of company policy” were not de minimis). Taken together, the stipulated facts establish that the preparation of Market News Notes was a regular part of the sales representatives’ non-sales duties and a systematic practice that Uline required as a matter of its training policies. *See Wrigley*, 505 U.S. at 235, 112 S. Ct. at 2459-60.

Because all non-ancillary activities must be considered together for purposes of de minimis analysis, *Wrigley*, 505 U.S. at 235, 112 S. Ct. at 2459-60; *Skagen*, 2012 WL 1450008, at \*7, and because the preparation of Market News Notes was not a de minimis activity, Uline’s unprotected activities exceed the scope of the protections provided by section 381.

#### **D. Penalties**

The Commissioner assessed a 20 percent substantial understatement penalty against Uline under Minn. Stat. § 298A.60, subd. 4(b) (2022), because the understatement of tax exceeded 10 percent of the tax required to be shown per the Commissioner’s Order.<sup>165</sup>

---

<sup>162</sup> Ex. J7, at ULIN-0000196.

<sup>163</sup> Stip. ¶ 82.

<sup>164</sup> Ex. J9, at “Market News Notes 2014-15” tab at lines 2-1610.

<sup>165</sup> Per the parties’ stipulation, the Commissioner is not seeking to apply the 10 percent negligence penalty. Stip. ¶ 27; Comm’r’s Mem. Law Supp. 4 n.3.



The amount of the understatement subject to penalty is reduced by the portion of the understatement attributable to the tax treatment of any item if:

(1) there is or was substantial authority for the treatment, or (2)(i) any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return and (ii) there is a reasonable basis for the tax treatment of the item.”

Minn. Stat. § 289A.60, subd. 4(d). The statute does not define the term “substantial authority.”

Uline asks the court to consider Internal Revenue Service regulations providing that substantial authority for a tax item exists if “the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment.”<sup>166</sup> 26 C.F.R. § 1.6662-4(d)(3)(iii) (2022); see *Danielson v. Comm’r of Revenue*, No. 8349-R, 2013 WL 1092126, at \*11 (Minn. T.C. Mar. 11, 2013) (citing federal regulations to define substantial authority).

While not necessarily incorporating the IRS regulation concerning substantial authority as a matter of law, the court agrees that Uline had substantial authority for its tax position. Uline contends that its business activities during the Years at Issue did not establish sufficient minimum contacts with Minnesota to be subject to corporate franchise tax, under the authority of the ITCA. Case law concerning the application of the ITCA have been few, and highly fact-intensive, requiring each court to delve into the taxpayer’s specific business practices and the activities of its personnel in the state. In this case, the court determined that three of the Commissioner’s bases for establishing minimum contacts with Minnesota – Uline’s job fair activities, Mr. Uihlein’s occasional work from home in Minnesota, and its customer complaint resolution activities – either were not business activities or were immune under the ITCA, and the Order cannot be sustained on those bases. This court also determined that, although the infrequent incidence of personally

---

<sup>166</sup> Appellant’s Mem. Law Supp. 38-40.

picking up and transporting returns from Minnesota customers was not entirely ancillary to solicitation of orders, on its own, it was de minimis; in the absence of any other non-ancillary activities that are not de minimis (such as the Market News Notes), the Order could not have been sustained on that basis. Finally, although this court sustained the Commissioner's remaining basis for establishing nexus, the "weight" of definitive supporting authorities cannot be said to favor either party.

For these reasons, the Commissioner's substantial understatement penalty is reversed.

#### **IV. CONCLUSION**

The regular and systematic preparation of Market News Notes accessible to non-sales personnel went beyond mere solicitation of orders for purposes of immunity under the ITCA. Accordingly, Uline maintained sufficient minimum contacts with Minnesota to be subject to corporate franchise tax during the Years at Issue. The Commissioner's motion for partial summary judgment is granted and Uline's motion for summary judgment is denied as to Uline's liability for corporate franchise tax during the Years at Issue. The parties have not stipulated to a tax amount due and must do so within 60 days or the court will establish a schedule for further proceedings, limited to the determination of the tax amount due.

As to the application of the substantial understatement penalty under Minnesota Statutes section 289A.60, subdivision 4(b), Uline's motion for summary judgment is granted and the Commissioner's motion for summary judgment is denied.

W.S.T.