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Illinois - Separate lines of business constitute one unitary group



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Clarcor, Inc. ("Clarcor") had one line of business engaged in packaging and one engaged in filtration. On its original 2002 and 2003 tax returns, Clarcor included packaging and filtration as members of its unitary group. Clarcor later amended these returns to report packaging as a separate unitary group and to claim a refund. The Illinois Department of Revenue denied the claim, finding that packaging should be included with filtration as one unitary business.

An Illinois Appellate Court in *Clarcor, Inc. v. Hamer*, Dkt. No 1-11-1674 (May 11, 2012) noted that the constitutional test for a unitary business group is whether there is "some sharing or exchange of value not capable of precise, identification or measurement." The court focused on whether the enterprise "generates income which can't confidently be ascribed to a particular state in which the enterprise operates." Here, the court noted that all cash generated by each subsidiary was swept daily into an account controlled by the parent. From this common account, the parent allocated funds as needed to any of its subsidiaries to meet their operating needs. As a result, the court stated, "it would be difficult to ascribe with certainty what cash was attributable to which entity." Further, the court noted that there was a common pension and welfare plan, and stock option compensation was based on performance of the whole group rather than individual subsidiaries.

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