DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	DATE FILED: March 10, 2017 1:57 PM CASE NUMBER: 2015CV33831
Plaintiff(s) TARGET BRANDS INC v. **Defendant(s)** COLO DEPT OF REVENUE et al.	△ **COURT USE ONLY** △
	Case Number: 2015CV33831 Division: 424 Courtroom:

Order and Judgment

Based on the evidence presented at trial, the Court concluded that the Department's alternative use of a sales factor--and nothing more--was unreasonable in determining TBI's state income tax. The Court's rationale was that this was not a so-called K-Mart situation and use of the sales factor alone ignored the fact that TBI was not a shell company.

TBI suggested, and presented evidence, that at a minimum its payroll and property must be given consideration. If writing on a blank slate, this Court likely would select a different alternative means to account for TBI's status as a substantive company, which nonetheless primarily consists of intangible holdings. But the Court is limited to the evidence admitted at trial. The Court disagrees with TBI, however, that--consistent with the evidence--it cannot use an approach other than one that evenly weighs payroll, property and sales.

Under sec. 30-21-105(2)(b), the Court can modify the Department's determination. In fact, the parties expressed their preference for the Court doing so rather than sending the case back to the Department. The Court could have determined the weight to be given TBI's property and payroll as part of its findings and conclusions, but instead provided the parties an opportunity to present an agreed-upon calculation. Now, with the parties at impasse, the Court concludes that accepting TBI's evenly-weighted approach is unreasonable. Target compensated TBI based on sales. TBI's activities--roughly reflected in part by its payroll and property--contributed to those sales. But it would give undue weight to those factors to consider them equally with sales.

The Department's suggested calculations are more consistent with the Court's findings and conclusions. Judgment will enter accordingly. Based on Ex. A, attached, judgment enters for the Department and against TBI in the amount of $12,699,336.

Issue Date: 3/10/2017

A BRUCE JONES
District Court Judge

EXHIBIT A

DEPARTMENT'S EXHIBIT A

Three-factor apportionment for tax years 2002 through 2009

Apportionment Factor = (.25 x TBI Payroll) + (.25 x TBI Property) + (.5 x Modified Sales Factor (Target Sales Factor))

	Tax Years								
	2002	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**Total**
Tax	$732,867	$744,065	$1,012,694	$925,656	$1,092,162	$1,195,584	$1,230,703	$1,256,737	**$8,190,468**
Interest (to 2/27/2017)	N/A	N/A	N/A	$729,848	$744,555	$683,186	$593,030	$514,333	**$3,264,952**
Delinquent Penalty	$87,944	$89,288	$121,523	$111,079	$131,059	$143,470	$147,684	$150,808	**$982,855**
Estimated Tax Penalty	N/A	N/A	N/A	$35,526	$52,396	$63,244	$55,667	$42,202	**$249,035**
Total TP&I	$820,811	$833,353	$1,134,217	$1,802,109	$2,020,172	$2,085,484	$2,027,084	$1,964,080	**$12,687,310**

Additional interest on the tax amount for tax years 2005 through 2009 ($5,700,842) accrues at a rate of $1,093.31 per day after February 27, 2017 for the remainder of 2017.