STATE OF WISCONSIN

TAX APPEALS COMMISSION

LOUIS DREYFUS PETROLEUM PRODUCTS CORP. (P), **DOCKET NO. 03-I-132 (P)**

Petitioner,

vs. **DECISION AND ORDER**

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DIANE E. NORMAN, ACTING CHAIRPERSON:

The above-entitled matter comes before the Commission on the Stipulation of Facts and Documents filed by the parties on December 6, 2006 (the "Stipulated Facts" and "Stipulated Documents" numbered 1 through 12). The Stipulated Facts are set forth below in ¶¶ 5 through 28, substantially in the form agreed by the parties. Petitioner, Louis Dreyfus Petroleum Products Corp., a Delaware corporation ("Petitioner"), appears by Attorneys Harry E. Van Camp, Frederic J. Brouner and Brody C. Richter of DeWitt, Ross & Stevens, S.C. Respondent, Wisconsin Department of Revenue ("Department"), appears by Attorney Mark S. Zimmer. Both parties have filed briefs.

Having considered the entire record before it, the Commission finds, concludes, decides and orders as follows:

JURISDICTIONAL FACTS

1. On August 17, 1998, the Department issued a Notice of Amount Due to Petitioner that assessed additional franchise tax on Petitioner in the amount of $85,573.43 for the 1997 tax year (the "assessment").

2. Under date of October 16, 1998, Petitioner filed a petition for redetermination with the Department.

3. On March 12, 2003, the Department issued a Notice of Action on Petitioner's petition for redetermination denying the relief sought by Petitioner.

4. On May 12, 2003, Petitioner filed a timely petition for review with the Commission.

STIPULATED FACTS

5. During the first six months of Petitioner's 1997 tax year (fiscal year June 1, 1996 – May 31, 1997), Petitioner was a 50% general partner in Pilot Travel Ventures, a Delaware general partnership ("PTV"), together with Pilot Corporation, a Tennessee corporation ("Pilot"), which was the other 50% general partner. On November 30, 1996, Petitioner sold its interest in PTV to Pilot, resulting in a capital gain to Petitioner of $21,164,746 (the "Capital Gain").

6. During all of the years that Petitioner held its interest in PTV, Petitioner did not conduct any commercial operations and its sole activity during all of the years, up through and including the date of the sale of its interest in PTV, was limited to holding an interest as a general partner in PTV.

7. Petitioner filed its separate Wisconsin Corporation Franchise or Income Tax Return for the 1997 Tax Year reporting the Capital Gain on line 4 of the return. Petitioner sourced the entire Capital Gain to the state of Connecticut, taxpayer's

state of commercial domicile, removing it entirely from Petitioner's Wisconsin tax base. Petitioner's Connecticut Tax Return was filed by applying an apportionment factor determined by Petitioner using Connecticut tax law with the result that an apportionment factor of .049249 was applied to the Capital Gain.

8. In addition to the Capital Gain, Petitioner recognized $672,468 in interest income from its parent company, Louis Dreyfus Energy Corp. ("LDEC"). This amount (the "Interest Income") was also reported by Petitioner on line 4 of the Wisconsin return for the 1997 Tax Year and was sourced to the State of Connecticut, removing it entirely from Petitioner's Wisconsin tax base. Petitioner's Connecticut Tax Return was filed by applying an apportionment factor determined by Petitioner using Connecticut tax law with the result that an apportionment factor of .049249 was applied to the Interest Income.

9. In addition to the Capital Gain and the Interest Income, Petitioner also recognized $3.025 million in pass-through Partnership Income from PTV for the 1997 Tax Year. This amount (the "Partnership Income") was also reported by Petitioner on line 4 of the Wisconsin return for the 1997 Tax Year. The Partnership Income was apportioned partly to Wisconsin and partly to Connecticut and other states. The treatment of the Partnership Income is not in dispute. Petitioner's Connecticut Tax Return was filed by applying an apportionment factor determined by Petitioner using Connecticut tax law with the result that an apportionment factor of .049249 was applied to the Partnership Income.

10. PTV was formed to build, own, lease and operate truck stops and convenience stores ("Travel Centers") in a number of states, including Wisconsin. Under the Partnership Agreement for PTV (the "Partnership Agreement") (Stipulated

Document #1), the management of PTV was vested in an Executive Committee, as provided therein (the "Executive Committee"). The Executive Committee was comprised of four members, two appointed by Pilot Corp. and two appointed by Petitioner. The persons initially appointed by Petitioner were Daniel R. Finn and Simon B. Rich, who served in that capacity until October 4, 1993, when Mr. Rich was replaced by John L. Goss. Daniel R. Finn, John L. Goss and Simon B. Rich were also officers in other members of the Louis Dreyfus group of companies affiliated with Petitioner. PTV entered into a management agreement with Pilot (the "Management Agreement"). (Stipulated Document #2.) Under the Management Agreement, Pilot was expressly granted certain authority to manage PTV's operations as set forth therein. Other oversight decisions remained with PTV, as set forth in the Management Agreement, and were carried out on behalf of PTV by employees of Pilot Corp. located at Pilot's Tennessee headquarters and each Travel Center in various states, including the one in Wisconsin.

11. All of the $672,468 of interest earned during the 1997 Tax Year related to a loan from Petitioner to LDEC, which was made out of the proceeds of the sale of Petitioner's interest in PTV. At the point in time of making the loan, Petitioner had disposed of its interest in PTV. Petitioner's interest in PTV represented Petitioner's only contact with Wisconsin during all the years under audit.

12. None of the officers or directors of Petitioner were partners, officers, managers or employees of PTV. PTV's activities in Wisconsin were limited to the ownership and operation of one travel center located in Wisconsin.

13. Petitioner's only connection with Wisconsin was through its partial ownership interest in PTV.

14. Petitioner negotiated and executed the sale of its interest in PTV at its corporate headquarters in Wilton, Connecticut.

15. Petitioner never purchased, sold or owned an interest in a partnership, apart from its ownership interest in PTV.

16. During the period that Petitioner owned an interest in PTV; Petitioner's activity was limited to the ownership of that asset, which was managed from its corporate headquarters in Connecticut.

17. After Petitioner sold its interest in PTV, Petitioner's only asset was the loan balance (receivable) from LDEC and Petitioner's activity was limited to the ownership of that asset, which was managed from its corporate headquarters in Connecticut.

18. Petitioner borrowed the initial cash that it contributed to PTV from LDEC. Subsequently that loan was repaid from loan proceeds from Louis Dreyfus Capital Corporation ("LD Capital").

19. Petitioner used a portion of the proceeds from the sale of its interest in PTV to pay off its loan from LD Capital and loaned the remaining balance of the proceeds to LDEC. LDEC used those proceeds as working capital during tax year 1997. No note was ever executed by LDEC to evidence such loan.

20. Other than certain hedging services provided by LDEC to PTV, which ended several years prior to the sale of Petitioner's interest in PTV, none of the affiliated Louis Dreyfus Group companies (hereinafter referred to as "The Louis Dreyfus Group") engaged in business transactions with PTV. The hedging services (Stipulated Document #5) were terminated by mutual consent of LDEC and Pilot. LDEC ceased providing hedging services several years prior to the sale of Petitioner's

interest in PTV to its partner, Pilot Corp. No entity related directly or indirectly to Petitioner ("Louis Dreyfus Group") provided any management, purchasing, marketing, legal, accounting, tax, technical, research and development, employee benefit or employee training services on behalf of PTV. The Louis Dreyfus Group did provide management, legal, accounting, tax, and employee benefit services to Petitioner. The Louis Dreyfus Group did provide insurance coverage for Petitioner. The Louis Dreyfus Group did not share or exchange personnel information with PTV. PTV was entirely staffed with Pilot employees who operated the travel centers in various states, including Wisconsin, and managed the business from Pilot's headquarters in Tennessee. The Louis Dreyfus Group was represented on the PTV Executive Committee (per Stipulated Document #7).

21. Since Petitioner's sole purpose was to hold the investment in PTV, it did not require the physical office space ordinarily associated with an operating business and had its domicile at Louis Dreyfus Group's U.S. headquarters in Wilton, Connecticut where LDEC was also located along with numerous other Louis Dreyfus Group companies.

22. The PTV travel centers were operated under the trade name "Pilot" and did not bear the "Louis Dreyfus" trade name in any respect whatsoever.

23. PTV did not use any of the business assets of Petitioner or the Louis Dreyfus Group. The Louis Dreyfus Group and PTV did not share any common customers.

24. The investment in PTV was the first, and to date the only, time that The Louis Dreyfus Group directly or indirectly invested, operated or owned a business

that engaged in the retail sale of motor fuels. The Louis Dreyfus Group has operated, and currently operates, substantial businesses in the wholesale sale of motor fuels.

25. Except for the members of the Executive Committee enumerated above, none of the officers, directors or employees of the Louis Dreyfus Group were managers or employees of PTV.

26. Only the treatment of Petitioner's Tax Year 1997 is in dispute in this appeal.

27. Petitioner timely filed Wisconsin franchise tax returns for Tax Years 1994 through 1997, inclusive.

28. During Tax Years 1994 through 1997, inclusive, PTV had nexus with Wisconsin by virtue of the service center owned and operated by it in the State of Wisconsin.

ADDITIONAL FACTS CONTAINED IN STIPULATED DOCUMENTS

29. During the period under review, LDEC was one of the largest independent distributors of refined petroleum products, with one of the largest networks in the United States. (Deposition of Hal Wolkin, Senior Vice President of Louis Dreyfus Corp., dated August 3, 2006, pp. 54-55) (hereinafter, "Wolkin Dep.").

30. Pilot was a customer of LDEC in connection with the purchase of petroleum products for its gas stations and other truck stops. (Wolkin Dep., p. 13.)

31. LDEC did not sell petroleum products to PTV truck stops because those truck stops were not in close proximity to any of the terminal facilities operated by LDEC. (Wolkin Dep., p. 61.)

32. The business purpose of the PTV partnership was to acquire and own or lease Travel Centers, which sell fuel for trucks and autos and may include

convenience stores and restaurants. (Stip. Doc. #1, § 1.3.) PTV was not allowed to engage in any business or activity other than those described in Section 1.3 of the Partnership Agreement without the written consent of both Petitioner and Pilot. *Id.*

33. Petitioner and Pilot each contributed an equal amount to the initial capital of PTV. (Stip. Doc. #1, § 2.)

34. Petitioner and Pilot shared PTV's profits and losses, as well as any requirements for additional capital contributions, as determined by the Executive Committee of PTV. (Stip. Doc. #1, § 2.)

35. The Executive Committee of PTV, which was composed of two members appointed by Petitioner and two members appointed by Pilot, had full power and authority to act upon all matters that were necessary to PTV's business. (Stip. Doc. #1, § 3.)

36. The Management Agreement employed Pilot as the exclusive manager of PTV, but specifically reserved certain authority from Pilot, including responsibility for determining what amounts of capital were needed to carry out the business purposes of PTV, arranging for financing in excess of the partners' capital contributions, and all hedging transactions, which were the responsibility of LDEC pursuant to the Agreement between LDEC and Pilot dated January 1, 2992 (the "LDEC Agreement"). (Stip. Doc. #2; Stip. Doc. #5.)

37. The LDEC Agreement remained effect until Petitioner sold its interest in PTV to Pilot and the PTV partnership terminated. Under the LDEC Agreement, LDEC had the sole discretion to determine if, when and to what extent to engage in hedging transactions on behalf of PTV. The LDEC Agreement provided that

PTV was responsible for paying LDEC any out-of-pocket expenses, but no fees, in exchange for providing these services. (Stip. Doc. #5.)

38. The purpose of the hedging transactions was for LDEC to provide its expertise in hedging to maintain a competitive price for the fuel sold at PTV's Travel Centers and increase PTV's profitability. (Wolkin Dep., pp. 72-75.)

39. LDEC made hedging trades for PTV in its own name and used LDEC's own accounts. (Wolkin Dep., p. 76.)

40. Because the hedging transactions performed by LDEC did not result in any material incremental benefits to the margins of PTV's Travel Centers, LDEC stopped performing hedging transactions for PTV after 1.5 to 2 years after the beginning of the PTV partnership, at Pilot's request. (Wolkin Dep., pp. 18-19.)

ISSUES INVOLVED

1. Was Petitioner's Capital Gain from the sale of its interest in PTV apportionable to the State of Wisconsin?

2. Was Petitioner's Interest Income derived from its loan of a portion of the proceeds from the sale of its interest in PTV apportionable to the State of Wisconsin?

WISCONSIN APPORTIONMENT STATUTE

> **Wis. Stat. § 71.25(5) Corporations engaged in business both within and without the state.**
> (a) *Apportionable income.* Except as provided in sub. (6), corporations engaged in business both within and without this state are subject to apportionment. Income gain or loss from the sources listed in this paragraph is presumed apportionable as unitary or operational income or other income that has a taxable presence in this state. Apportionable income includes all income or loss of corporations, other than nonapportionable income as specified in par. (b), including, but not limited to, income, gain or loss from the following sources:

* * *

5. Sale of real property or tangible personal property used in the production of business income.

* * *

10. Sale of intangible assets if the operations of the company in which the investment was made were unitary with those of the investing company, or if those operations were not unitary but the investment activity from which that gain or loss was derived is an integral part of a unitary business and the companies were neither affiliates nor related as parent company and subsidiary. In this subdivision, "investment activity" has the meaning given under subd.9.

* * *

17. Sale of receivables.

* * *

21. Patents, copyrights, trademarks, trade names, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals and technical know-how.

OPINION

I. Petitioner's Capital Gain

Under both the Due Process and the Commerce Clauses of the United States Constitution, a state may not, when imposing an income-based tax, "tax value earned outside its borders." *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 164 (1983), quoting *ASARCO Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307, 315 (1982). In determining whether a state has overstepped its bounds in this regard, the taxpayer has the burden of showing by clear and cogent evidence that the state tax results in extraterritorial values being taxed. *Exxon Corp. v. Wis. Dep't of Revenue,* 447 U.S. 207, 221 (1980).

A state may constitutionally tax an apportioned sum of a corporation's multistate business without isolating its intrastate income-producing activities if the business is unitary. *Allied Signal v. Director, Div. of Tax.*, 504 U.S. 768 (1992). The Supreme Court said:

> [T]he unitary business rule is a recognition of two imperatives: the States' wide authority to devise formulae for an accurate assessment of a corporation's intrastate value or income; and the necessary limit on the States' authority to tax value or income which cannot in fairness be attributed to the taxpayer's activities within the State.

Id. at 780.

In *Allied Signal* the Supreme Court reaffirmed its earlier holding in *Container Corp., supra,* that the constitutional test of unitariness focuses on the three factors of functional integration, centralization of management and economies of scale, and that these "essentials" could respectively be shown by: transactions not undertaken at arm's length; a management role by the parent which is grounded in its own operational expertise and operational strategy; and the fact that the corporations are engaged in the same line of business. *Allied Signal*, 504 U.S. at 789.

The Court went further in *Allied Signal* by finding that the parties to a capital transaction "need not be engaged in the same unitary business as a prerequisite to apportionment in all cases . . . . What is required instead is that the capital transaction serve an operational, rather than investment, function." *Id.* at 787. The Court further declared that "[t]he existence of a unitary relation between payee and payor is one justification for apportionment, but not the only one." *Id.* Under *Allied Signal*, two separate, independent tests thus have been developed for determining whether apportionment is allowed, which are generally known as the "unitary business

test" and the "operational function test." *See also Hercules Inc. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-283 (WTAC 1997).

A. Applicable Wisconsin Law

Of these two tests, Petitioner argues that Wis. Stat. § 71.25(5)(a)10 allows only the unitary business test, because the Capital Gain income at issue in this matter resulted from the sale of partnership assets. Petitioner argues that the sale of partnership assets is the sale of intangible assets, and under Wis. Stat. § 71.25(5)(a)10, intangible assets may be subject to apportionment only if the operations of the company in which the investment was made are unitary with those of the investing company.[1]

In support of this argument, Petitioner cites a single federal district court opinion, *Safford v. United States*, 216 F. Supp. 226 (E. D. Wis. 1963), where the court declared that "[t]he proposition that the sale of a partnership interest is to be treated as the sale of an intangible asset or chose in action and, hence, of a capital asset, rather than of interests in specific assets of the firm, is now well established." *Id.* at 229. However, the court in *Safford* cites no authority for this assertion, and whether this distinction is even relevant under *Allied-Signal*, decided almost 30 years later, is not at all clear. In addition, the partnership interest in *Safford* involved the income and earnings of an architectural firm partnership, and the income at issue was a deceased partner's interest in future earnings. That partnership interest was held to be an

[1] Petitioner further argues that even if it is determined that the Capital Gain is found to be apportionable under Wis. Stat. § 71.25(5)(a)10, it would be unconstitutional to tax that income because no nexus existed between Petitioner and Wisconsin. However, the parties stipulated that PTV had nexus with Wisconsin during the period under review by virtue of the Travel Center owned and operated by PTV in the State of Wisconsin. (Stip. ¶ 24.) Petitioner timely filed a Wisconsin income tax return for 1997, the year at issue in the assessment, and concedes that its Partnership Income for that year (other than the Capital Gain) was apportionable to Wisconsin. (Stip. ¶¶ 5 & 23). If PTV had nexus with Wisconsin during the period at issue, and Petitioner had nexus with Wisconsin for purposes of apportioning the Partnership Income, then Petitioner also had nexus with Wisconsin with respect to the Capital Gain.

intangible asset in 1963, but the facts in this case and current law on the subject lead us a different conclusion.

"A partner's interest in the partnership is the partner's share of the profits and surplus, and the same is personal property." Wis. Stat. § 178.22. A general partner is "co-owner with the other partners of specific partnership property holding as a tenant in partnership," subject to specified incidents of this tenancy. Wis. Stat. § 178.21(2)-(3). Wisconsin partnership and tax law conform to federal tax law, under which income from a partnership is not taxed at the entity level, but instead flows through to the partners. *See* 26 U.S.C. § 701 *et. seq.*

When Petitioner sold its partnership interest in PTV to its general partner, Pilot, it sold its rights to the specific partnership property of PTV. PTV's assets included ownership or leasehold interests in Travel Centers, one of which was located in Wisconsin. Under Wis. Stat. § 178.21(2), Petitioner was co-owner with Pilot of PTV's property in Wisconsin, and under Wis. Stat. § 71.25(5)(a)5, income from the sale of that property in Wisconsin, which was used in the production of business income, was apportionable income.

B. Constitutional Limits: Unitary Business Test

Although the Capital Gain appears to be apportionable under Wisconsin law, such apportionment must still pass constitutional muster under the unitary business and operational function tests. The unitary business test centers on three factors: functional integration, centralization of management and economies of scale.

1. Functional Integration

According to *Allied-Signal*, the first factor used to determine whether a business is unitary is whether there is functional integration between the entities in

question. Among the factors that demonstrate such functional integration is a history of transactions not undertaken at arm's-length. *Allied-Signal,* 504 U.S. at 789.

The record shows that Petitioner and PTV engaged in transactions that were not undertaken at arm's-length. At the inception of the partnership, Petitioner's parent company, LDEC, agreed to perform hedging transactions for PTV to increase the profitability of the partnership. According to the hedging contract, LDEC was to perform hedging transactions and only charge PTV for out-of-pocket expenses. These hedging transactions were performed in the name of LDEC and all profits or losses that resulted from the hedging transactions for PTV were the profits or losses of PTV as computed by LDEC.

Petitioner argues that these transactions are irrelevant because LDEC stopped performing these transactions for PTV prior to the period under review. According to Petitioner, the hedging transactions did not perform as well as the partners had hoped and LDEC stopped performing the transactions 1.5 to 2 years after the partnership began. However, the agreement that allowed the hedging contracts to take place remained in effect up until the time of the termination of the partnership. PTV could take advantage of LDEC's expertise in negotiating these hedging contracts without paying a fee for the services at any time until then, including during the year at issue in the assessment. This contract to use LDEC's expertise to improve the profitability of PTV bears none of the hallmarks of an arm's-length contract.

There are essentially no facts on the record showing a history or pattern of arm's-length transactions between Petitioner and PTV. Indeed, because its ownership in PTV was Petitioner's only business activity, and PTV was a general partnership, there

is little support for drawing any distinction between these two entities. Overall, the record shows that they were functionally integrated.

2. Centralization of Management

Centralization of management exists where there is a management role by the parent grounded in its own operational expertise and operational strategy. *Allied Signal*, 504 U.S. at 789. Control over the enterprise is a basis for that management role:

> In any event, although potential control is, as we said in *F.W. Woolworth*, not "dispositive" of the unitary business issue, . . . it is relevant, both to whether or not the components of the purported unitary business share that degree of common ownership which is a prerequisite to a finding of unitariness, and also to whether there might exist a degree of implicit control sufficient to render the parent and the subsidiary an integrated enterprise.

Container Corp., 463 U.S. at 177 n. 16, *citing F.W. Woolworth Co. v. Taxation and Revenue Dep't of N.M.*, 458 U.S. 354, 362 (1982) (citations omitted).

Petitioner had a management role in PTV. Petitioner was a wholly owned subsidiary of LDEC and its only business was its 50% interest in PTV as a general partner. Petitioner and Pilot each contributed an equal amount of capital to start up the business of PTV, and Petitioner shared the profits and losses of PTV as an equal partner with Pilot. While day-to-day management of PTV was handled by Pilot under the Management Agreement, ultimate control of the partnership was held by PTV's Executive Committee, which was composed of two representatives from Petitioner and two representatives from Pilot. Only the Executive Committee could determine whether additional funds were needed for the partnership and arrange for financing, as well as decide questions involving the ultimate disposition of the partnership's assets. Finally, the Executive Committee entered into the LDEC Agreement (regarding hedging

transactions) and the Management Agreement to operate the business of the partnership.

Petitioner's investment in PTV was Petitioner's only business activity. Petitioner's 50% ownership of and concomitant right to control PTV via its 50% representation on the PTV Executive Committee reflect an active, not passive, investment. These facts indicate that PTV and Petitioner had centralized management.

3. Economies of Scale

Where the corporations in question are engaged in the same line of business, then there may be economies of scale created, indicating a unitary business. *Allied Signal*, 504 U.S. at 789. Providing start-up and operating capital for a joint venture can create economies of scale. *See Chilstrom Erecting Corp. v. Wis. Dep't of Revenue,* 174 Wis. 2d 517, 529 (Ct. App. 1993) (taxpayer and partner provided all start-up capitalization and only source of operating capital in joint ventures, which showed economies of scale).

PTV was Petitioner's only business activity, so Petitioner and PTV were in the same line of business. Petitioner provided half of the capital investment to start up PTV, and, through PTV's Executive Committee, had joint control with Pilot over management of PTV's capital requirements. These facts show that there were economies of scale between Petitioner and PTV.

C. Constitutional Limits: Operational Function Test

According to the operational function test under *Allied Signal,* income from a capital transaction that serves an operational rather than investment function can be subject to apportionment by a state even where the payor and payee are not engaged

in the same unitary business. Here, the record shows that Petitioner's investment in PTV served an operational rather than investment function.

LDEC, one of the largest wholesale distributors of petroleum products in the U.S., entered into a partnership with its customer, Pilot, to sell petroleum products at retail through Travel Centers. LDEC formed Petitioner as a wholly owned subsidiary and loaned to Petitioner its share of the start-up capital of PTV. Petitioner and Pilot entered into a 50/50 general partnership in PTV for the purpose of selling petroleum products at the Travel Centers. Pilot agreed to manage the Travel Centers owned by PTV and LDEC agreed to provide its hedging transaction expertise to the partnership.

This ongoing business with PTV continued until the partnership terminated in 1997. When Petitioner sold its interest in PTV to Pilot, it paid back the loan of start-up capital to LD Capital, another member of the Louis Dreyfus Group that had loaned funds to Petitioner to pay off the initial loan from LDEC. Petitioner loaned the remaining sale proceeds to LDEC, which LDEC used as working capital in its business.

From inception to disposition, Petitioner's investment in PTV served an operational purpose tied to LDEC's ongoing operations. LDEC was in the business of selling petroleum products to Pilot. To bolster this relationship with Pilot and to profitably use its hedging transaction expertise, LDEC formed Petitioner and entered into the PTV partnership with Pilot. When the partnership terminated, the proceeds from the sale of PTV were returned LDEC to use as working capital in its ongoing business.

II. Petitioner's Interest Income

As set forth in the Stipulated Facts, the Department also determined that the Interest Income earned by Petitioner from the loan of the remaining proceeds of the sale of its interest in PTV to its parent company, LDEC, was apportionable to Wisconsin. After Petitioner sold its interest in PTV, it used a portion of the proceeds to pay back a loan it had received from LD Capital, another member of the Louis Dreyfus Group. The rest of the proceeds from the sale of PTV were loaned to Petitioner's parent company, LDEC. Petitioner earned the Interest Income at issue here on that loan to LDEC.

Petitioner's only business in Wisconsin during the period under review was its partnership interest in PTV. When Petitioner sold its interest in PTV, Petitioner ceased to have any contacts with Wisconsin. While Petitioner and LDEC continued to be unitary with each other, there was no longer any unitary connection with PTV, because the partnership had terminated. Therefore, when Petitioner loaned a portion of the proceeds from the sale of its interest in PTV to its parent company, its Interest Income from that loan was not apportionable to Wisconsin.

For the reasons discussed herein,

IT IS ORDERED

That the Department's action on Petitioner's petition for redetermination is affirmed as to the Capital Gain from the sale of its interest in PTV and reversed as to the Interest Income from its loan of a portion of the proceeds from the sale of its interest in PTV.

Dated at Madison, Wisconsin, this 2nd day of January, 2008.

WISCONSIN TAX APPEALS COMMISSION

Diane E. Norman, Acting Chairperson

David C. Swanson, Commissioner

ATTACHMENT: **"NOTICE OF APPEAL INFORMATION"**