December 6, 2024

Mr. Craig Scott
Acting Chief Counsel
State of California
Franchise Tax Board
9646 Butterfield Way
Sacramento, CA 95827

RE: Petition for Alternative Apportionment to the Franchise Tax Board
Jack in the Box Inc. & Subsidiaries
CCN: 0631563
Tax Years Ended: 09/2014 – 09/2020

Dear Mr. Scott,

Jack in the Box Inc. & Subsidiaries ("JIB" or "Taxpayer") petitions the Franchise Tax Board ("FTB") for alternative apportionment pursuant to California Revenue & Taxation Code ("CRTC") section 25137.

On June 25, 2019, Taxpayer filed claims for refund requesting alternative apportionment for the 2014 through 2017 tax years due to disparate and unfair treatment of its franchised restaurant activity as compared to its company-owned restaurant activity under the standard California apportionment formula. Taxpayer properly filed its alternative apportionment refund claims in accordance with FTB Notice 2004-05, which states that if a taxpayer seeks alternative apportionment, it must petition for and obtain relief prior to using an alternative apportionment formula on a tax return. FTB Notice 2004-05 provides that taxpayers who take alternative apportionment positions on an original tax return without approval will be subject to accuracy related penalties.

The Franchise Tax Board Staff ("FTB Staff") began auditing the refund claims on October 16, 2019. Taxpayer provided all requested information related to the audit in a timely and forthright manner. Taxpayer filed additional refund claims for the 2018 and 2019-2020 tax years on the same basis on March 10, 2021, and August 22, 2022, respectively.

After a five-year audit, the FTB Staff 25137 Committee denied Taxpayer's request for alternative apportionment in a determination dated October 9, 2024.

During the course of the audit, the FTB Staff has repeatedly taken inconsistent positions regarding the reflection of Taxpayer's business activity in its California apportionment factor. For example, contrary to the statute and California court precedent, the FTB Staff argued that marketing receipts JIB received from its franchisees did not meet the definition of "gross receipts."[1] However, the FTB found that Common Area Maintenance fees and property taxes paid by franchisees to JIB did meet the definition of gross receipts.

[1] According to CRTC section 25120(f)(2), "gross receipts" means the gross amounts realized (the sum of money and the fair market value of other property or services received); see generally *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750.

Further, the FTB determined that gross receipts from the sale of JIB restaurant assets should be included in the apportionment formula, yet gross receipts from the sale of Qdoba restaurant assets (a brand owned by JIB) should be excluded. JIB restaurant asset sales that the FTB auditor insisted must be included were primarily located in California while the Qdoba asset sales that the auditor argued could not be included were primarily located outside the state. The FTB also removed employee transition receipts paid by Qdoba to JIB from the apportionment formula.

JIB's goal throughout the audit has been fair apportionment and its positions have remained consistent: all gross receipts of the business should be included in the apportionment formula to fairly reflect Taxpayer's business activity in the state.

To advance timely resolution of this matter, Taxpayer has attached its opening brief to this petition.

If you have any questions or wish to discuss further, please do not hesitate to contact me at (916) 601-9707 or jon.a.sperring@pwc.com.

Sincerely,

Jon A. Sperring
Principal, SALT Controversy
PwC US Tax LLP

Enclosure: Taxpayer's Opening Brief and accompanying Exhibits
FTB 25137 Committee Determination Letter

cc: Ms. Selvi Stanislaus
Ms. Delinda Tamagni
Mr. Tim Lindell, Jack in the Box
Mr. Jung Pyun, Jack in the Box
Mr. Chris Whitney, PwC
Mr. Ron Cox, PwC