

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

**IN THE MATTER OF:**

The Proposed Corporate )  
Franchise and Income Tax )  
Assessments for the Fiscal )  
Years of January 31, 1992 )  
through January 31, 1994 )  
by the Secretary of Revenue )  
of North Carolina )

vs. )

A&F Trademark, Inc., )  
Caciqueco, Inc., )  
Expressco, Inc., )  
Lanco, Inc., )  
Lernco, Inc., )  
Limco Investments, Inc., )  
Limtoo, Inc., )  
Structureco, Inc. )  
V. Secret Stores, Inc. )

**ADMINISTRATIVE DECISION**

**Number: 381**

This matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer on Thursday, February 14, 2002, upon the Petition of A&F Trademark, Inc., Caciqueco, Inc., Expressco, Inc., Lanco, Inc., Lernco, Inc., Limco Investments, Inc., Limtoo, Inc., Structureco, Inc., and V. Secret Stores, Inc. ("hereinafter Taxpayers") for administrative review of the Final Decision of Michael A. Hannah, Assistant Secretary of the North Carolina Department of Revenue, entered on September 19, 2000, sustaining the Department's proposed assessment of corporate franchise and income taxes for fiscal year ended January 31, 1994.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Paul H. Frankel, Hollis L. Hyans, and Craig B. Fields of Morrison & Foerster, LLP, and Jasper L. Cummings, Jr., of Alston & Bird, LLP represented the Taxpayers at the hearing. Kay Miller Hobart, Assistant Attorney General, represented the Secretary of Revenue at the hearing.

## **STATEMENT OF FACTS**

The Taxpayers are nine wholly-owned subsidiaries of the Limited Stores, Inc. (the "Limited") an Ohio corporation. The Limited also owns 100% of eight retail companies. Those companies are: Lane Bryant, Inc.; Lerner, Inc.; Victoria's Secret, Inc., Cacique, Inc.; Abercrombie & Fitch, Inc.; Limited Too, Inc.; Express, Inc.; and Structure, Inc.

The Limited and the wholly-owned eight retail subsidiaries are doing business in North Carolina and pay corporate income and franchise taxes here. During the year at issue, the Limited and the eight retail subsidiaries operated over 130 retail locations in North Carolina.

Taxpayers were incorporated in Delaware to hold the trademarks owned by the Limited and the related retail companies. The marks owned by the Taxpayers include "The Limited," "Limited Too," "Victoria's Secrets," "Express," "Structure," "Cacique," "Abercrombie and Fitch," "Lane Bryant," and "Lerner." The marks are a form of intangible personal property. The Taxpayers do not own or lease any real property or tangible personal property in any state except Delaware. The Taxpayers have no employees in any state. The Taxpayers received the marks they own in separate I.R.C. Section 351 tax-free exchanges with the related retail companies. In these exchanges, the related retail companies transferred the marks to the Taxpayers for little or no consideration. The Taxpayers then entered into a licensing agreement with the corresponding related retail companies. The licensing agreements authorized the related retail companies to continue to use the marks they had previously owned in exchange for royalty payments to the Taxpayers. These agreements required the retail stores to pay Taxpayers a royalty fee based on the percentage of the retail companies' gross sales. The Limited and the related retail companies deducted these royalty payments from their income for North Carolina tax purposes. Taxpayers then loaned these royalty payments back to the related companies for use in their retail operations. Taxpayers charged the retail companies a market rate of interest, which generated further deductions for the related retail companies.

Taxpayers did not pay any income tax to any state on any of the income received from the related retail companies. For the year at issue (1994), Taxpayers recorded \$301,067,619 in royalty income and \$122,031,344 in interest income from the related retail companies. This accounted for 100% of Taxpayers' income.

## **STATEMENT OF CASE**

The Department of Revenue issued proposed notices of tax assessments, which the Taxpayers protested. On June 9, 10, and June 11, 1998, a three-day administrative hearing was held before Michael A. Hannah, the Assistant Secretary of Revenue. On September 19, 2000, the Assistant Secretary issued the Final Decision. In the Final

Decision, the Assistant Secretary cancelled the assessments for the Taxpayers' fiscal years ended January 31, 1992 and January 31, 1993, which were fiscal years that began prior to the November 2, 1992 effective date of the Administrative Rule. The Assistant Secretary also waived all penalties asserted by the Department of Revenue against the Taxpayers. However, the Assistant Secretary sustained the Department of Revenue's assessment of corporate franchise and income tax against the Taxpayers for the fiscal year ended January 31, 1994. In this Final Decision, the Assistant Secretary concluded that the Taxpayers were doing business in North Carolina. He also concluded that the contractual relationship between the Taxpayers and their Licensees created an agency relationship and that all of the activities that the Licensees were required to perform under the license agreements were attributable to Taxpayers. Additionally, the Assistant Secretary concluded that Taxpayers were "excluded corporations" under G.S. 105-130.4(a)(4), and are therefore required to use a single sales factor as their apportionment formula under G.S. 105-130.4(r) & (l). The Assistant Secretary also determined that the Taxpayers could be required to be included in combined reports with their related Licensees. On December 15, 2000, Taxpayers filed with the Board a Petition for Administrative Review of the Final Decision pursuant to G.S. 105-241.2.

### **ISSUES**

The issues considered by the Board upon administrative review of this matter are stated as follows:

1. Whether the Taxpayers were "doing business" in this State within the meaning of G.S. 105-130.3 and G.S. 105-114 so as to be subject to the corporate income and franchise tax.
2. Whether the Taxpayers were "excluded corporations" within the meaning of G.S. 105-130.4(a)(4).

### **EVIDENCE**

The evidence presented at the hearing before the Assistant Secretary of Revenue and included in the record for the Board's review is attached as Exhibit A and is incorporated by reference herein.

### **FINDINGS OF FACT**

The Board reviewed the following findings of facts made by the Assistant Secretary in his final decision:

1. The Taxpayers are nine non-domiciliary corporations headquartered in Delaware.
2. The Taxpayers are wholly-owned subsidiaries of the Limited, Inc. ("Limited").

3. The Limited is primarily engaged in the nationwide retail sale of men’s, women’s, and children’s clothing and accessories.
4. The Limited’s principal place of business and commercial domicile is located in Columbus, Ohio.
5. The Limited started in business in 1963 and has expanded to over 5,000 stores nationwide and 12 separate retail operating subsidiaries.
6. The Limited and its retail operating subsidiaries (“related retail companies”) own and operate all of their stores; none are franchised.
7. The Taxpayers own and license trademarks, tradenames, and service marks (“marks”) and the goodwill associated with these marks to the Limited and its related retail companies, nine of which are located in North Carolina.
8. The nine related retail companies operating in North Carolina are: (1) The Limited Stores, Inc.; (2) Cacique, Inc.; (3) Express, Inc.; (4) Lane Bryant, Inc.; (5) Lerner, Inc.; (6) Limited Too, Inc.; (7) Structure, Inc.; (8) Victoria’s Secret, Inc.; and (9) Abercrombie & Fitch.
9. The nine related retail companies operating in North Carolina have over 130 retail locations in North Carolina; these companies extensively use the Taxpayers’ marks at these locations.
10. The marks owned by the Taxpayers were all previously owned by either the Limited or one of the Limited’s related retail companies.
11. The Taxpayers license their marks to the nine related retail companies operating in North Carolina as follows:

<b><u>Taxpayer</u></b>	<b><u>Related Retail Company</u></b>
Limco Investments, Inc.	The Limited, Inc.
Caciqueco, Inc.	Cacique, Inc.
Expressco, Inc.	Express, Inc.
Lanco, Inc.	Lane Bryant, Inc.
Lernco, Inc.	Lerner, Inc.
Limtoo, Inc.	Limited Too, Inc.
Structureco, Inc.	Structure, Inc.
V. Secret Stores, Inc.	Victoria’s Secret, Inc.
A&F Trademark, Inc.	Abercrombie & Finch, Inc.

12. The structure of the Limited, the Taxpayers, and the related retail companies is illustrated on the following chart:

**The Limited, Inc.**

(formerly The Limited Stores, Inc.)

**Limco Investments, Inc.**

Owns the marks "The Limited," "Limited Express," and "Limited Too;" licenses the mark "The Limited" to The Limited, Inc; licenses the mark "Limited Express" to Expressco, Inc.; and licenses the mark "Limited Too" to Limtoo, Inc.

**Lanco, Inc**

Owns the mark "Lane Bryant" and licenses it to Lane Bryant, Inc.

**Lernco, Inc.**

Owns the mark "Lerner" and licenses it to Lerner, Inc.

**V. Secret Stores, Inc.**

Owns the mark "Victoria's Secret" and licenses it to Victoria's Secret, Inc.

**A&F Trademark, Inc.**

Owns the mark "Abercrombie & Fitch" and licenses it to Abercrombie & Fitch, Inc.

**Caciqueco, Inc.**

Owns the mark "Cacique" and licenses it to Cacique, Inc.

**Limtoo, Inc.**

Is licensed by Limco to use "Limited Too" mark; in turn, licenses the mark to Limited Too, Inc.

**Expressco, Inc.**

Is licensed by Limco to use "Express" mark; in turn, licenses the mark to Express, Inc.

**Structureco, Inc.**

Owns the mark "Structure" and licenses it to Structure, Inc.

**Lane Bryant, Inc.**

Related retail company acquired by The Limited, Inc.

**Lerner, Inc.**

Related retail company acquired by The Limited, Inc.

**Victoria's Secret, Inc.**

Related retail company acquired by The Limited, Inc.

**Abercrombie & Fitch, Inc.**

Related retail company acquired by The Limited, Inc.

**Cacique, Inc.**

Related retail company and former division of Limited, Inc.

**Limited Too, Inc.**

Related retail company and former division of Limited, Inc.

**Express, Inc.**

Related retail company and former division of Limited, Inc.

**Structure, Inc.**

Related retail company and former division of Express, Inc.

13. The Taxpayers purposefully utilize at least 130 retail locations in North Carolina to prominently display their marks, advertise apparel bearing their marks, and avail themselves of the North Carolina marketplace.
14. The Taxpayers' marks are permanently affixed to the 130 retail locations throughout North Carolina.
15. The related retail companies filed North Carolina franchise and income tax returns for the tax years January 1992 through January 1994 pursuant to G.S. 105-130 *et seq.*
16. The related retail companies reduced their North Carolina tax liability by deducting accrued royalty and interest expenses "paid" by journal entries to Taxpayers, thus producing substantial tax savings.
17. The Taxpayers accrued royalty and interest income on their books for tax years 1992 through 1994.
18. The Taxpayers did not file North Carolina franchise or income tax returns for tax years 1992 through 1994.
19. The Taxpayers did not pay any corporate income tax in Delaware or in any other state on their substantial royalty income and interest income deducted by the related retail companies.

*Creation of Taxpayers*

20. In its early years of operation, the Limited developed and cultivated intangible intellectual property including trademarks, tradenames, service marks, and associated goodwill.
21. Mr. Frank Colucci, Taxpayers' trademark counsel, testified that a trademark as defined under trademark law is "any name, word, symbol or device which one manufacturer or provider of services uses to distinguish his goods or services from like goods or services of another." (T. 6/9/98, p. 232).
22. The Limited incurred substantial expenses in the development of its marks. The expenses were deducted from the Limited's gross income in the determination of its federal taxable income.
23. The Limited's North Carolina taxable income was also reduced by the expenses associated with the development of its marks because the Limited's North Carolina net income was based on its federal taxable income.

24. The value and significance of the trademark “The Limited” increased as the number of the Limited’s stores increased.
25. All of the Limited’s marks were registered, monitored, policed, and defended against infringement by the Limited’s own in-house legal counsel prior to the formation of Taxpayers.
26. Officers of the Limited, including Mr. Kenneth Gilman, the Executive Vice-President and Chief Financial Officer of the Limited, concluded that the creation of a separate trademark holding company was the best way to protect the trademark from being “knocked off.” (T. 6/9/98, p. 45).
27. The Limited’s Board of Directors authorized the establishment of a separate trademark company to hold the trademark “The Limited.”
28. On December 19, 1980, Articles of Incorporation were filed with the Delaware Secretary of State incorporating Limco Investments, Inc. (“Limco”).
29. Limco held its first Board of Directors’ meeting on January 29, 1981.
30. At this meeting, the Board authorized a tax-free exchange of assets for stock between the Limited and Limco in accordance with I.R.C. § 351, which is a common method of capitalizing subsidiaries.
31. Also on January 29, 1981, Limco issued 100 shares of its common stock, par value \$1.00 per share, to the Limited for \$100. In addition, the Limited made a \$10,000 capital contribution to Limco.
32. The Limited became the sole shareholder of Limco.
33. By written Assignment dated January 28, 1981 The Limited assigned its marks and associated goodwill to Limco.
34. The Limited received little or no consideration for the transfer of its marks and goodwill to Limco.
35. The Limited did not have its trademark valued by a third party for a determination of the trademark’s actual worth before assigning the trademark to Limco.
36. Both Limco and the Limited filed registration statements with the United States Patent and Trademark Office reporting the change in ownership of the trademark

“The Limited” together with the goodwill established by the trademark from the Limited to Limco.

37. Limco did not register the trademark “The Limited” with the North Carolina Secretary of State’s Office.
38. On January 29, 1981, the same day that the Limited assigned its marks and related goodwill to Limco, Limco and the Limited entered into a licensing agreement whereby Limco granted the Limited the right to use its marks in the Limited’s retail operations.
39. Limco received, under the terms of the licensing agreement, royalties in the amount of 5% of the Limited’s retail sales.
40. On January 29, 1981, the same day that the Limited assigned its marks and related goodwill to Limco, Limco and the Limited entered into a loan agreement whereby Limco agreed to loan the Limited money on a secured or unsecured basis, in an amount not to exceed \$2,000,000. The loan agreement required the Limited to repay Limco any outstanding loan balance in 90 days and required the Limited to accrue and pay interest at the current prime rate.
41. The Limited acquired several retail establishments specializing in varying areas of apparel and began to operate these companies as wholly-owned subsidiaries. The acquired retail companies were: (1) Lane Bryant, Inc. (“Lane Bryant”), specializing in apparel for large size women; (2) Victoria’s Secret, Inc. (“Victoria’s Secret”), specializing in ladies’ lingerie; (3) Lerner, Inc. (“Lerner”), specializing in women’s apparel at a budget price; and (4) Abercrombie & Fitch, Inc. (“Abercrombie & Fitch”), specializing in upscale, casual clothing.
42. The marks owned by each of the acquired retail companies had name recognition and associated goodwill prior to acquisition of the retail companies by the Limited.
43. The Limited created separate trademark companies in a manner consistent with the tax-free creation of Limco.
44. The trademark holding company, Lanco, Inc. (“Lanco”), was incorporated in Delaware on December 15, 1982.
45. The retail company, Lane Bryant, assigned its trademark “Lane Bryant,” together with the goodwill of the business symbolized by the trademark, to Lanco by a written Assignment recorded with United States Patent and Trademark Office.

46. Lane Bryant received little or no consideration from Lanco for its trademarks.
47. Lane Bryant did not have its trademark valued by a third party for a determination of the trademark's actual worth before assigning the trademark to Lanco.
48. The trademark holding company, Lernco, Inc. ("Lernco"), was incorporated in Delaware on May 2, 1985.
49. The retail company, Lerner, assigned its trademark "Lerner," together with the goodwill of the business symbolized by the trademark, to Lernco by written Assignment recorded with the United States Patent and Trademark Office.
50. Lerner did not have its trademark valued by a third party for a determination of the trademark's actual worth before assigning the trademark to Lernco.
51. Lerner received little or no consideration from Lernco for its trademarks.
52. The trademark holding company, A&F Trademark, Inc. ("A&F Trademark"), was incorporated in Delaware on February 2, 1988.
53. The retail company, Abercrombie & Fitch, assigned its trademark "Abercrombie & Fitch," together with the goodwill of the business symbolized by the trademark, to A&F Trademark by written Assignment recorded with the United States Patent and Trademark Office.
54. Abercrombie & Fitch received little or no consideration from A&F Trademark for its trademarks.
55. Abercrombie & Fitch did not have its trademark valued by a third party for a determination of the trademark's actual worth before assigning the trademark to A&F Trademark.
56. The trademark holding company, V. Secret Stores, Inc. ("V. Secret"), was incorporated in Delaware on December 1, 1988.
57. The retail company, Victoria's Secret, assigned its trademark "Victoria's Secret," together with the goodwill of the business symbolized by the trademark, to V. Secret by written Assignment recorded with the United States Patent and Trademark Office.
58. Victoria's Secret received little or no consideration from V. Secret for its trademarks.

59. Victoria's Secret did not have its trademark valued by a third party for a determination of the trademark's actual worth before assigning the trademark to V. Secret.
60. In addition to acquiring retail companies, the Limited developed its own retail companies by incorporating various business segments or divisions operated by the Limited. The retail divisions incorporated as wholly-owned subsidiaries of the Limited were: (1) Express, Inc. ("Express"), specializing in younger women's apparel; (2) Cacique, Inc. ("Cacique"), specializing in an older, more sophisticated type of lingerie; and (3) Limited Too, Inc. ("Limited Too"), specializing in clothing for young girls.
61. The trademark holding company, Expressco, Inc. ("Expressco"), was incorporated in Delaware on September 9, 1987.
62. On September 10, 1987, Expressco issued 100 shares of its common stock, par value \$1.00 per share, to the trademark holding company, Limco, in exchange for \$100. In addition, Limco made a \$20,000 capital contribution to Expressco.
63. Also on September 10, 1987, Limco granted Expressco a non-exclusive license to use the tradename "Limited Express" or "Express" and the right to sub-license these tradenames to other companies.
64. Limco did not charge Expressco any royalty fee for the use of its mark "Express."
65. Limco did not have its trademark valued by a third party for a determination of the trademark's actual worth before licensing the trademark to Expressco.
66. The trademark holding company, Limtoo, Inc. ("Limtoo"), was incorporated in Delaware on August 1, 1991.
67. On December 31, 1991, Limtoo issued 100 shares of its common stock, par value \$1.00 per share, to the trademark holding company, Limco, in exchange for \$100. In addition, Limco made a \$10,000 capital contribution to Limtoo.
68. Limco became the sole shareholder of Limtoo.
69. On September 9, 1991, Limco granted to Limtoo a non-exclusive license to use the trademark "Limited Too".
70. Limtoo licensed the tradename "Limited Too" from Limco, the Limited's wholly-owned subsidiary that owned the trademark.

71. Limco did not charge Limtoo any royalty fee for the use of its mark “Limited Too”.
72. Limco did not have its trademark valued by a third party for a determination of the trademark’s actual worth before licensing the trademark to Limtoo.
73. The trademark holding company, Structureco, Inc. (“Structureco”), was incorporated in Delaware on August 1, 1991.
74. On December 11, 1991, Structureco issued 100 shares of its common stock, par value \$1.00 per share, to Express for \$100. In addition, Express made a \$20,000 capital contribution to Structureco.
75. Express is the sole shareholder of both Structure and Structureco.
76. On December 11, 1991, Express assigned the trademark “Structure” together with its associated goodwill to Structureco.
77. Also on December 11, 1991, Structureco licensed the tradename “Structure” to Express under the terms of a Related Company Agreement.
78. Structureco did not charge Express any royalty fee for the use of its mark “Structure”.
79. Structureco did not have its trademark valued by a third party for a determination of the trademark’s actual worth before licensing the trademark to Express or Structure.
80. The trademark holding company Caciqueco, Inc. (“Caciqueco”) was incorporated in Delaware on August 1, 1991.
81. On September 9, 1991, Caciqueco issued 100 shares of its common stock, par value \$1.00 per share, to the Limited for \$100. In addition, the Limited made a \$10,000 capital contribution to Caciqueco.
82. Also on September 9, 1991, the Limited assigned to Caciqueco the trademark “Cacique” together with its associated goodwill.
83. On January 1, 1991, Caciqueco licensed the trade name “Cacique” to Cacique under the terms of a Related Company Agreement.
84. The Limited did not have its trademark valued by a third party for a determination of the trademark’s actual worth before assigning the trademark to Caciqueco.

85. All corporate formalities required by Delaware laws were observed in the creation of each Taxpayer.
86. Taxpayer and its corresponding related retail companies properly filed registration statements with the United States Patent and Trademark Office indicating the transfer to the Assignee of the right, title, and interest in the trademarks together with the goodwill of the business connected with the use of the marks.
87. The Taxpayers did not register their trademarks or tradenames with the North Carolina Secretary of State, relying instead on the registrations with the United States Patent and Trademark Office.
88. Upon the creation or acquisition of each Taxpayer and the tax-free assignment or grant of a license to use or sublicense the marks, each Taxpayer would license or sublicense the use of the marks back to the respective related retail company pursuant to a related company licensing agreement.
89. Each related company licensing agreement followed the format established by the original Limco licensing agreement.
90. Each related company licensing agreement entered into between a Taxpayer and the related retail company gave the related retail company a non-exclusive license to use the Taxpayer's trademarks, tradenames, service marks, and associated goodwill in its retail operations throughout the United States.
91. Each related company licensing agreement required the related retail company to pay the Taxpayer a set royalty fee based upon the related retail company's retail sales.
92. The related retail companies used Taxpayers' trademarks, tradenames, and service marks and their associated goodwill in North Carolina to promote and enhance their business in North Carolina.
93. Mr. Kenneth Gilman, President of all the Taxpayers, testified that Taxpayers' trademarks were sewn in the label of the clothes sold at the retail locations in North Carolina. (T. 6/9/98, p. 75).
94. The Taxpayers' marks were used by the related retail companies located in North Carolina in their store layout, their merchandising, and their advertising.
95. The Taxpayers' ownership of the marks did not affect the use of the marks in North Carolina in the eyes of the public consumer who continued to purchase apparel from the retail locations and who were unaware that the marks had been assigned to Taxpayers.

96. Mr. Kenneth Gilman testified that there were no changes in the relationship of the customer and the related retail companies as a result of the assignment of the marks to Taxpayers. (T. 6/9/98, pp. 149-150).
97. Mr. Kenneth Gilman testified that as long as a related retail company operated in accordance with the licensing agreements, the day-to-day operations of the related retail company did not change with the creation of Taxpayers and the assignment of the marks. (T. 6/9/98, pp. 148-149).
98. Neither the Taxpayers nor any of the related retail companies made any public announcements notifying the public of either the formation of Taxpayers or the assignment of the marks to Taxpayers.
99. The shareholders of the Limited were not notified that the marks and the goodwill associated with the marks had been assigned to Taxpayers.
100. Employees of the related retail companies were not notified that the marks and goodwill associated with the marks had been assigned to Taxpayers.
101. After the assignment of the marks, Taxpayers depended upon the same consumer recognition and customer loyalty for the production of their income that had existed prior to the transfer of the marks.
102. At no time during the audit period did the Limited's annual reports or its Form 10-Ks disclose the formation of Taxpayers or the transfer to Taxpayers of marks valued at approximately \$1.2 billion dollars.
103. The Limited's January 30, 1993, Form 10-K included a footnote "A," which reads: "[T]he names of certain subsidiaries are omitted since such unnamed subsidiaries considered in the aggregate as a single subsidiary would not constitute a significant subsidiary as of January 30, 1993."
104. The Taxpayers were not listed as subsidiaries of the Limited on the January 30, 1993 Form 10-K.
105. Mr. Kenneth Gilman testified that the intercompany transactions occurring during the audit period between Taxpayers (producing over \$1 billion in income) and the related retail companies (producing over \$203 million in losses) were not significant enough to be disclosed in the footnotes of the Limited's annual report financial statements. (T. 6/9/98, pp. 117-123).

Organization of Taxpayers

106. Each of the Taxpayers elected a Board of Directors, the composition of which changed from time to time during the audit period
107. The Board of Directors was generally the same for each Taxpayer.
108. The Taxpayers' Board of Directors consisted of Mr. Kenneth Gilman, President, Mr. Louis Black, an attorney, Mr. Roger Thompson, a banking executive, and Mr. Edward Jones, an accountant from Delaware Corporate Management.
109. Mr. Kenneth Gillman testified that he did not believe that he had attended a board meeting of the Taxpayers in over 10 years. (T. 6/9/98, p. 160).
110. Mr. Kenneth Gillman testified that he delegated his responsibilities as board member of the Taxpayers to Mr. Tim Lyons, Vice-President of Taxes for the Limited. (T. 6/9/98, pp. 56-57).
111. The Taxpayers compensated Board members not associated with the Limited for board meetings attended but did not compensate the Board members directly employed by the Limited.
112. Mr. Kenneth Gilman testified that neither he nor Mr. Tim Lyons as executives of the Limited were permitted to receive compensation for services performed for any subsidiary of the Limited. (T. 6/9/98, p. 125).
113. Mr. Louis Black testified that each of Taxpayers' boards on which he served compensated him fifty dollars (\$50) for each board meeting attended. (T. 6/9/98, pp. 208-209).
114. The Taxpayers' expenses associated with the compensation of board members averaged \$600 per year per Taxpayer.
115. The Taxpayers' Board of Directors met quarterly and they discussed such things as royalty rates, interest rates, and the authorized lending limits between the Taxpayers and the related retail companies.
116. The Taxpayers' board members authorized increased lending limits for the related retail companies as needed when the balance of the related retail companies' outstanding notes receivable reached authorized lending limits.
117. The Taxpayers' Board of Directors meetings were held at Mr. Louis Black's office, not at the Taxpayers' leased office space.

118. The Taxpayers' corporate records, such as minutes, charters, and by-laws, were kept in Mr. Louis Black's office, not at the Taxpayers' leased office space.
119. The Taxpayers held annual stockholders' meetings as required by Delaware law and adopted appropriate resolutions, including the election of officers and directors.
120. The Taxpayers' officers or board members did not prepare yearly business plans for the operations of Taxpayers.
121. The Taxpayers did not own or lease any real property or any tangible personal property in any state except Delaware.
122. The Taxpayers subleased shared office space from Delaware Corporate Management in a building located in Delaware.
123. The Taxpayers shared office equipment and office supplies.
124. The Taxpayers' primary office address was 1105 Market Street, Delaware; approximately 670 companies not related to the Limited or its wholly-owned subsidiaries list this same address as their primary office address.
125. Mr. Louis Black testified that an employee of Delaware Corporate Management doing work for or on behalf of Taxpayers used Taxpayers' subleased office space, "if they [were] used by anyone at all." (T. 6/9/98; p. 227).
126. The Taxpayers' rental expense associated with the subleased office space in Delaware approximated \$240 per year for each Taxpayer.
127. The subleased office space was not permanently assigned to Taxpayers, but instead was rotated much like a time share-arrangement.
128. The Taxpayers hired no employees in any state.
129. The Taxpayers outsourced all of their accounting, legal, banking and administrative services.
130. The law firm of Morris, Nichols, Arsht & Tunnel, of which Mr. Louis Black was a partner, was hired as legal counsel for Taxpayers.
131. Delaware Corporate Management, of which Mr. Ed Jones was an employee, was hired as Taxpayers' accounting firm.

132. As board member and principal executive in charge of Taxpayers' accounting services, Mr. Ed Jones was limited to signing checks not to exceed \$500.
133. The Taxpayers contracted with Mr. Frank Colucci of the firm Colucci & Umans as their trademark counsel.
134. The Taxpayers maintained checking accounts in their own names.
135. The Taxpayers used their checking accounts to pay operating expenses such as legal and accounting bills.
136. The Taxpayers did not incur substantial ordinary and necessary business expenses such as postage, telephone, or utilities for their business operations in Delaware.
137. The Taxpayers contracted with Delaware Corporate Management, a "nexus service provider" to perform services on their behalf in Delaware.
138. Services performed by Delaware Corporate Management for the Taxpayers included: (1) providing officers and directors located in the State of Delaware; (2) providing office space; (3) mail forwarding; (4) filing annual Delaware Franchise Tax Returns; (5) maintaining the operating checkbook; and (6) scheduling use of a shared conference room.

*Operations of the Taxpayers*

139. The Taxpayers' Board of Directors agreed to license their marks to the related retail companies pursuant to licensing agreements.
140. The Taxpayers' trademark counsel, Mr. Frank Colucci, assisted in drafting licensing agreements between the Taxpayers, as licensor, and the related retail companies, as licensees.
141. Mr. Frank Colucci testified that all of the Taxpayers' licensing agreements were basically the same in terms of the legal requirements imposed on both the licensee and licensor. (T. 6/9/98, p. 243).
142. Each licensing agreement granted the related retail company a non-exclusive license to use all of the Taxpayer's marks in its retail operations.
143. The terms of each licensing agreement required the related retail company to pay a royalty fee of between 5% and 6% of its retail operating gross sales to Taxpayers in return for continued use of the marks.

144. Each licensing agreement allowed the related retail company to continue using the Taxpayer's name in conducting its business in the same manner as before the creation of the Taxpayer.
145. Initially, the royalty rates charged by the Taxpayers to the related retail companies were estimated by Taxpayers' trademark counsel based upon his knowledge of licensing agreements between unrelated third parties and what he believed to be a reasonable royalty based on a fair, arms-length transaction.
146. Dr. Irving Plotkin, the Taxpayers' expert witness, testified that: "When you deal with a transaction between a related party, the transaction itself is not arm's length. It cannot be - it could not have come about by an arm's length negotiation." (T. 6/11/98, pp. 68-69).
147. Dr. Plotkin testified that: "The [intercompany] agreement should have never been described as an arm's length agreement, because [it] couldn't have been." (T. 6/11/98, p. 70).
148. The Taxpayers eventually solicited trademark valuation studies from third parties, which they used to establish the royalty rate, charged.
149. The Taxpayers were required on occasion to amend the royalty rates charged to the related retail companies to correspond with the royalty rates determined by the third party valuation studies.
150. The values of the marks as determined by the trademark valuation reports were dependent upon the "on-going" retail operations of the related retail companies.
151. The royalty rate charged to the related retail companies as determined by the trademark valuation reports was between 5% and 6%.
152. The Taxpayers were completely dependent upon the operations of the related retail companies, including the ones located in North Carolina, for the production of their income because the royalty rates charged by the Taxpayers were based on a percentage of the related retail companies' operating sales.
153. A royalty fee was not charged for the use of the marks when a license or sublicense agreement was entered into between two Taxpayers.
154. Neither the Limited nor any of its subsidiaries licensed or sublicensed marks to foreign subsidiaries.

155. The Taxpayers' Profit and Loss Statements for the years at issue did not include any foreign source royalty income.
156. Royalty income received from foreign subsidiaries is considered gross income and fully taxable for federal corporate income tax purposes pursuant to I.R.C. § 951.
157. The only time the Taxpayers, as licensors, charged a royalty fee for the use of their marks to an affiliated company, as a licensee, was when a state tax benefit could be obtained by the licensee.
158. Each licensing agreement entered into between a related retail company, as licensee, and a Taxpayer, as licensor, required the related retail company to make quarterly royalty payments for the use of the trademarks.
159. The related retail companies did not pay the royalty fees to Taxpayers or tender any cash remittances to Taxpayers in settlement of the royalties charged.
160. Each related retail company accrued a royalty expense deduction based on a percentage of sales.
161. Mr. Kenneth Gilman testified that the royalty payments due under the licensing agreements were made by accounting journal entry. No checks were written nor were there any physical transfers of funds between the parties. The related retail companies therefore "paid" their royalty fees to Taxpayers via accounting journal entries. (T. 6/9/98, p. 93).
162. The North Carolina taxable income of each of the related retail companies was significantly reduced by the deduction of accrued royalty expenses.
163. The Taxpayers accrued but never received payment for royalties from the respective related retail companies.
164. The accrued royalty receivables for each of the Taxpayers increased on a yearly basis corresponding closely to the amount of accrued royalty payables recorded on the books of the related retail companies.
165. The related retail companies' accrued royalty receivables were never collected.
166. The Taxpayers paid no state income tax to Delaware or any state on the accrued royalty receivables.
167. The Taxpayers' expenses were miniscule in relation to their accrued income. For example, Limco's total expenses for the three years at issue were \$729,175, which

is 0.2% of its total accrued income of \$311,952,574 during the same period. Of Limco's total expenses, legal expenses alone equaled \$687,754 or 94.32% of total expenses.

168. Limco's remaining expenses of \$41,421 for the three years at issue were immaterial and are summarized as follows: (1) Delaware franchise fees - \$150; (2) accounting services - \$31,052; (3) telephone expenses - \$1,102; (4) rental expenses - \$ 720; (5) Director's fees - \$2,300; (6) custodial expenses to Delaware Trust Management - \$3,520; (6) depreciation expenses - \$1,862; (7) other miscellaneous expenses - \$714.
169. The Taxpayers neither declared nor paid a dividend to the Limited or to any of the related retail companies during the audit period.
170. The Taxpayers entered into loan agreements whereby Taxpayers loaned their excess operating funds to the related retail companies in the form of notes receivable.
171. Mr. Kenneth Gilman testified that the primary source of lending to the related retail companies was the earnings of Taxpayers. (T. 6/9/98, pp. 105-106).
172. Mr. Louis Black testified that Taxpayers earned their money by charging the related retail companies royalties for the use of Taxpayers' marks and by receiving interest through loaning the related retail companies money. (T. 6/9/98, p. 179).
173. The Taxpayers' Board of Directors, including Mr. Louis Black, authorized loans to the related retail companies in amounts comparable to the cumulative amount of royalties the related retail companies accrued during the tax year.
174. Despite authorizing loans to the related retail companies in excess of \$100 billion, Taxpayers' Board Member, Mr. Louis Black, testified that he had not reviewed the Limited's 10-K or its annual reports. (T. 6/9/98, p. 201).
175. The notes, which were generally 180-day promissory notes, contained standard provisions such as loan amount, interest rate, due date, and names of the parties.
176. All notes bore a market rate of interest.
177. The Taxpayers earned interest income on the notes to the related retail companies.
178. The related retail companies did not pay any outstanding principal or interest on the notes to the Taxpayers during the audit period.

179. The related retail companies accrued an interest expense deduction on their outstanding notes receivable.
180. The interest charges were settled by accounting journal entries.
181. As notes matured, the Taxpayers made the required journal entries and issued new notes to the related retail companies.
182. The Taxpayers' Board of Directors increased the authorized lending limits of the related retail companies once the related retail companies' outstanding notes receivable balances reached authorized limits.
183. The notes receivable contained no mechanism by which the Taxpayers could collect the loan debt from the related retail companies.
184. The Taxpayers made no attempt at collecting the outstanding notes receivable during the audit period.
185. The Taxpayers instructed their custodian, Wilmington Trust, to make no attempt to collect the outstanding notes.
186. The Taxpayers' Yearly Statements of Account reflecting the asset value of Taxpayers' outstanding notes were marked "Notes - Do Not Collect."
187. The Taxpayers did not loan money to or borrow money from any unrelated third party.
188. The North Carolina taxable income of the related retail companies was reduced by the deduction of the accrued royalty and interest expenses that were never paid.
189. The Taxpayers paid no state income tax to Delaware or any state on the royalty or interest income.
190. The Taxpayers earned 100% of their ordinary gross income from two sources: (1) the royalties charged to the related retail companies for the use of Taxpayers' marks and (2) interest earned from outstanding loans issued to the related retail companies.
191. The Taxpayers recorded royalty income totaling \$957,442,830 and interest income totaling \$236,728,978 from the related retail companies for the tax years at issue, broken down as follows:

<u>YEAR</u>	<u>ROYALTY INCOME</u>	<u>INTEREST INCOME</u>
1/92	\$298,494,228	\$ 58,610,029
1/93	349,880,983	56,087,605
1/94	<u>301,067,619</u>	<u>122,031,344</u>
<b>Total</b>	<b>\$ 949,442,830</b>	<b>236,728,978</b>

192. Pursuant to I.R.C. § 1501, the Taxpayers filed a consolidated federal income tax return with their parent, the Limited, for tax years ended January 1992, January 1993, and January 1994.
193. The intercompany royalty and interest transactions that occurred between Taxpayers and the related retail companies had no tax effect on the federal taxable income of the Limited because of required intercompany eliminations.
194. The intercompany royalty and interest transactions that occurred between Taxpayers and the related retail companies significantly decreased the North Carolina taxable income of the related retail companies.

*The Licensing Agreements*

195. The Taxpayers had incurred none of the costs and had performed none of the activities that, in any manner, had created, enhanced, or protected the value of the marks prior to the assignment of the marks to Taxpayers.
196. “Naked assignment” is a term used in trademark law that describes the assignment of a trademark without its associated goodwill.
197. Mr. Frank Colucci, Taxpayers’ trademark counsel, testified that it is illegal in the United States to assign trademarks without assigning the goodwill associated with the trademarks. (T. 6/9/98, p. 279).
198. Mr. Frank Colucci testified that goodwill is an accumulation of everything that the public perceives about a trademark - good, bad, or indifferent (T. 6/9/98, p. 280).
199. Mr. Frank Colucci testified that the goodwill the Taxpayers’ assigned to the related retail companies had been created by the related retail companies. (T. 6/9/98, p. 280).
200. Mr. Frank Colucci testified that, after the assignment of the marks to the Taxpayers, the only way to maintain the goodwill associated with the marks was to use the marks. Mr. Frank Colucci stated that, “You use the trademark and, through the use of the trademark, you either maintain the goodwill or you don’t maintain the goodwill.” (T. 6/9/98, p. 280).

201. Mr. Frank Colucci testified that the trademarks were used by the related retail companies wherever they had stores and businesses. (T. 6/9/98, p. 280).
202. If Taxpayers did not take appropriate measures to monitor the related retail companies' use of their marks, Taxpayers risked abandonment of their marks, thereby enabling third parties to use the marks in whatever manner they desired.
203. The trademark law concept of "naked licensing" requires the owner of a trademark that permits another company to use its trademark to ensure that the public is not deceived with respect to the nature and quality of the goods sold under the mark.
204. Mr. Frank Colucci testified that a licensing agreement is the contractual basis by which the licensor of a trademark or tradename controls the nature and quality of the goods and services sold by a licensee using the trademark or tradename. (T. 6/9/98, p. 241).
205. Mr. Frank Colucci testified that a court could invalidate a mark and refuse to enforce a mark if the owner of the mark does nothing to protect the public trust with respect to the nature and quality of the goods sold under the mark. (T. 6/9/98, p. 237).
206. Mr. Frank Colucci testified that "the whole idea of having a related company [licensing agreement is] that there be controls over an *agent* quality of the goods . . . so that the public being accustomed with a mark being used on one line of goods or services, now that it was given to another company, would not be confused or deceived." (emphasis added) (T. 6/9/98, pp. 236-237).
207. The Taxpayers relied upon the related retail companies to ensure that the public was not deceived with respect to the nature and quality of goods sold under Taxpayers' marks.
208. The Taxpayers, owners of the marks, controlled the use of the marks in North Carolina and the nature and quality of goods sold under the marks by the related retail companies in North Carolina.
209. The related retail companies performed activities in North Carolina on behalf of the Taxpayers, including the following: (1) the preparation of quarterly inspection reports regarding the activities of the retail location; (2) establishment of store layout and design; (3) selecting the merchandise that would bear Taxpayers' marks; (4) regularly advertising apparel and merchandise in this State bearing Taxpayers' marks; (5) inspecting merchandise bearing Taxpayers' marks; (6) reporting trademark violations; and (7) establishing and maintaining Taxpayers' economic market in North Carolina.

210. The activities performed in North Carolina on behalf of the Taxpayers were significantly associated with Taxpayers' ability to establish and maintain a market in North Carolina.
211. Mr. Kenneth Gilman testified that: "[I]t's important to protect the trademark because it's the identity of the company. It's one of the ways that you differentiate what you are as a company and what you represent; what you're selling; what you're trying to accomplish in a commercial marketplace from other people." (T. 6/9/98, p. 71).
212. The Taxpayers' commercial marketplace was in part located in North Carolina.
213. The Taxpayers' marks were displayed on the North Carolina retail locations of the related retail companies.
214. The related retail companies' activities, including marketing products bearing Taxpayer's trademarks and tradenames, maintaining the quality of the apparel sold under Taxpayers' marks, and otherwise providing retail customers with a quality shopping experience, inures to and enhances the value of Taxpayers' trademarks and tradenames in North Carolina.
215. Mr. Frank Colucci testified that he monitored "how the trademarks [were] used by the retailers" in his capacity as trademark counsel for both Taxpayers and the related retail companies. (T. 6/9/98, pp. 254-255).
216. Mr. Frank Colucci testified that representatives of the retailers as well as representatives of Taxpayers sent Mr. Frank Colucci or Mr. Frank Colucci's staff into the retail stores to monitor the use of Taxpayers' trademarks by the related retail companies. (T. 6/9/98, p. 260).
217. The Taxpayers, as owners of the marks, had the power to determine which retail companies used their marks and where they could be used.
218. The Taxpayers, as owners of the marks, had the power to control to whom the marks were licensed, what license fees were charged, and when the licensing agreements expired.
219. The Taxpayers, as owners of marks, had the right to dictate the manner in which the trademarks and tradenames were displayed at the retail locations throughout North Carolina.

220. The Taxpayers knowingly and purposefully granted the retail companies a license to use their marks in connection with retail operations worldwide, including in North Carolina.
221. The licensing agreements provided that all products sold by the related retail companies bearing Taxpayers' trademarks and tradenames had to be consistent with the high standards of quality and excellence established over the years by the related retail companies with respect to their trademarks and tradenames.
222. Sections 2.1 through 2.3 of the licensing agreements provided that Taxpayers' trademarks or tradenames had to be used by the related retail companies in accordance with the following terms and conditions: (1) the retailer would use its best efforts, skill, and diligence in the operation of its Stores, and would regulate its employees so that they will be courteous and helpful to the public; (2) the retailer would use its best efforts, skill, and diligence to ensure that the quality of all apparel sold under or in connection with the trademark or tradenames would not be less than the standard of quality previously established by the retail companies; and (3) the retailer would operate its stores in accordance with reasonable business standards and would provide a standard of service not less than the standard of quality previously established by the retail companies.
223. Section 3.1 of the licensing agreements provided that each retail store operated by a related retail company had to inspect the store at least once each year and had to notify Taxpayers of the inspections in a written statement verifying that the inspections took place.
224. The Taxpayers did not physically inspect any stores in North Carolina and rarely, if ever, visited any store outside of Delaware.
225. Store employees at the North Carolina retail locations of the related retail companies acted as quality assurance inspectors and performed all inspections of apparel bearing Taxpayers' marks to ensure the quality of the goods sold under Taxpayers' marks in North Carolina.
226. The North Carolina retail operating store employees, in their capacity as quality assurance inspectors, prepared inspection reports based on the operations of the related retail companies in this State.
227. Mr. Kenneth Gilman testified that the employees of the related retail companies performed inspections of the stores located in North Carolina in order to adhere to quality standards mandated by the licensing agreements and to demonstrate compliance with the licensors' requirements. (T. 6/9/98, pp. 86-88).

228. Section 3.1.2 of the licensing agreements provided that the related retail companies were responsible for, at their own cost and expense, correcting any deficiencies found in the quality of the products sold bearing Taxpayers' trademarks.
229. Section 4 of the licensing agreements provided that the related retail companies had to make available to Taxpayers samples of all advertising or other literature, packages, and labels bearing Taxpayers' tradename or trademarks.
230. Mr. Frank Colucci testified that he monitored all advertising associated with Taxpayers' trademarks and tradenames in his capacity as trademark counsel for both the related retail companies and Taxpayers. (T. 6/9/98, pp. 254-255).
231. In reviewing the advertising samples submitted by the related retail companies, Mr. Frank Colucci looked to ensure that Taxpayers' marks were used in a consistent manner and to ensure that the use did not infringe on other marks.
232. Section 11.1 of the licensing agreements required the related retail company to defend Taxpayers' marks against infringement by third parties at its own cost and expense.
233. Section 11.2 of the licensing agreements provided that if the related retail company was made party to a legal proceeding based upon a claim that one of Taxpayers' marks infringed upon a third party's mark, the related retail company had to, at its own cost and expense, defend its use of the licensed mark.
234. Prior to the formation of Taxpayers, the marks associated with the related retail companies were registered, monitored, and defended against infringement by the related retail companies themselves.
235. The Taxpayers continually updated the trademark filings and registrations with the United States Patent and Trademark Office in order to ensure that Taxpayers' rights in the marks were preserved.
236. Mr. Frank Colucci testified that his office filed with the United States Patent and Trademark Office every six years an affidavit "saying that [the] trademarks [were] still in use. Otherwise, [the trademarks would] be automatically cancelled." (T. 6/9/98, pp. 262-263).
237. Mr. Kenneth Gilman, President of the Limited, testified that the related retail companies located in North Carolina used Taxpayers' marks on a daily basis. (T. 6/9/98, pp. 74-75).

The Assessments

238. The Limited was contacted in March, 1995 by Mr. Al Milak, Revenue Field Auditor in the Interstate Audit Division, regarding the activities of the Limited and its affiliates in this State.
239. An on-site audit for corporate franchise and income tax was conducted in August 1995.
240. The auditors determined that Taxpayers, subsidiaries of the Limited, were doing business in this State and subject to corporate income and franchise taxation in this State pursuant to G.S. 105-114, 105-122, 105-130.1, and 105-130.3.
241. The Taxpayers were not filing corporate franchise and income tax returns.
242. The auditor requested on October 23, 1995 that Taxpayers file and pay North Carolina franchise and income tax, apportioning their income liability to this State as an excluded corporation pursuant to G.S. 105-130.4(a)(4) and 105-130.4(r).
243. The Taxpayers did not voluntarily file North Carolina franchise and income tax returns and refused to provide the auditors with sufficient information necessary to compute Taxpayers' North Carolina corporate liability.
244. Jeopardy assessments of corporate income and franchise taxes were issued for tax years January 1992, January 1993, and January 1994 under the authority of G.S. 105-241.1(g) on March 26, 1996 and on April 2, 1996.
245. The Taxpayers were assessed income and franchise taxes calculated on royalty and interest income derived from sources within North Carolina.
246. For each Taxpayer during the audit period, the franchise assessments of tax, penalties, and interest are as follows:

**Franchise Tax Assessments**

A&F Trademark, Inc.	\$ 3,963
Caciqueco, Inc.	\$ 1,025
Expressco, Inc.	\$ 37,264
Lanco, Inc	\$ 37,296
Lernco, Inc.	\$ 31,949
Limco Investments, Inc.	\$ 124,966
Limtoo, Inc.	\$ 44,142
Structureco, Inc.	\$ 1,071
V. Secret Stores, Inc.	\$ 27,176
<b>Total</b>	<b>\$ 308,852</b>

247. For each Taxpayer during the audit period, the corporate income tax assessments of tax, penalties, and interest are as follows:

**Income Tax Assessments**

A&F Trademark, Inc.	\$ 116,401
Caciqueco, Inc.	\$ 58,452
Expressco, Inc.	\$ 953,765
Lanco, Inc	\$ 580,231
Lernco, Inc.	\$ 766,775
Limco Investments, Inc.	\$ 1,331,052
Limtoo, Inc.	\$ 128,766
Structureco, Inc.	\$ 82,479
V. Secret Stores, Inc.	\$ 666,909
<b>Total</b>	<b>\$ 4,684,830</b>

248. The jeopardy income tax assessments were based on the best information available to the auditor. That information was Taxpayers' separate entity, "pro-forma" federal taxable income, Federal Line 28, as reflected on the Limited's consolidated 1120 tax return.
249. The proposed assessments were based on the State's assertion that Taxpayers were doing business in North Carolina by virtue of their activities of licensing intangibles for use in North Carolina and using in-state representatives in furtherance of their business activities.
250. On April 22, 1996, Taxpayers timely protested the proposed corporate income and franchise tax assessments and reserved the right to a hearing before the Secretary of Revenue.
251. An application for hearing was timely filed on August 18, 1997.
252. An Administrative Tax Hearing before the Secretary of Revenue was conducted by the hearings' officer on Monday, June 9 through Wednesday, June 11, 1998 in the Revenue Building on 501 North Wilmington Street.
253. On June 11, 1998, the hearings' officer granted Taxpayers' motion to waive all penalties associated with all three-tax years at issue.

**CONCLUSIONS OF LAW**

The Board reviewed the following conclusions of law made by the Assistant Secretary in his final decision:

1. The Taxpayers are subject to corporate income taxation in this State pursuant to G.S. 105-130 *et seq.*
2. The Taxpayers are subject to franchise taxation in this State pursuant to G.S. 105-114 *et seq.*
3. G.S. 105-130.3 imposes a tax upon the State net income of every C corporation doing business in this State.
4. The Taxpayers are C corporations.
5. G.S. 105-122 imposes a franchise tax upon every corporation domesticated under the laws of this State or doing business in this State.
6. The Taxpayers are not domesticated under the laws of this State.
7. For franchise tax purposes, “doing business” is defined as “[e]ach and every act, power or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.”
8. North Carolina Administrative Rule 17 NCAC 5C .0102 was promulgated by the Secretary of Revenue under authority of G.S. 105-262 and 105-264 to interpret G.S. 105-130.3.
9. Administrative Rule 17 NCAC 5C .0102 is *prima facie* correct.
10. Administrative Rule 17 NCAC 5C .0102 defines “doing business,” in pertinent part, as “the operation of any business enterprise or activity in North Carolina for economic gain, including, but not limited to . . . the owning, renting, or operating of business or income-producing property in North Carolina including, but not limited to . . . [t]rademarks [and] tradenames.”
11. The Taxpayers own intangible property in the form of trademarks, tradenames, and service marks and the goodwill associated with these marks.
12. There is no such thing as property in a trademark except as a right appurtenant to an established business or trade in connection with which the mark is employed.
13. A trademark has no independent significance apart from the goodwill it symbolizes; if there is no established business and no goodwill, a trademark symbolizes nothing.

14. A trademark cannot exist apart from the going business in which it is used.
15. Trademark rights are wholly dependent upon actual use.
16. The actual use of a symbol as a trademark in the sale of goods creates and builds up rights in a mark.
17. Lack of actual use can result in loss of legal rights in the mark, known as “abandonment.”
18. The Taxpayers licensed their intangible property, in the form of trademarks, tradenames, service marks and associated goodwill, to the related retail companies for use in this State.
19. If a trademark owner licenses the mark, the owner must control the nature and quality of the goods sold under the mark and must at all costs avoid deceiving the public.
20. The concept of quality control has been incorporated into the Lanham Act by the “related company” doctrine.
21. Under the Lanham Act, a “related company” is “any person whose use of the mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.”
22. If the owner controls the use of the mark by the licensee, the owner obtains the benefits of Section 5 of the Lanham Act, and the licensee’s use of the mark is attributed to and inures to the benefit of licensor, the owner of the mark.
23. If the owner of a trademark does not exercise sufficient actual control over the use of the mark by the licensee, the owner loses its rights in the mark through abandonment.
24. The trademark owner must exercise *actual* control over the licensee’s use of the mark. Mere paper control, such as a quality control provision in a licensing agreement, without actual control is insufficient. The mere legal right to control is insufficient, as is the voluntary exchange of information.
25. Under the related company doctrine, if the Taxpayers exercised sufficient actual control over the operations of the related retail companies in North Carolina with regard to their use of the marks and the nature and quality of the goods sold under the marks, the use by the related retail companies in North Carolina is attributed to and inures to the benefit of the Taxpayers.

26. Absent sufficient actual control by the Taxpayers over the related retail companies' use of the marks in North Carolina and the nature and quality of the goods sold under the marks in this State, the use of the marks by the related retail companies is not attributed to the Taxpayers.
27. If use by the related retail companies of Taxpayers' marks is not attributed to Taxpayers, the marks would be abandoned.
28. The licensing agreements between Taxpayers and the related retail companies created a contractual agency relationship between Taxpayers and the related retail companies.
29. The Taxpayers exercised actual control over the licensees' use of the marks at the 130 North Carolina retail locations and over the nature and quality of the goods sold under the marks by the licensees at these locations.
30. The related retail companies are "related retail companies" under the related company doctrine of trademark law.
31. The related retail companies regularly and systematically used the Taxpayers' marks at the 130 retail locations in North Carolina.
32. The intangibles owned by the Taxpayers and used at the 130 retail locations in this State have acquired a business situs in North Carolina.
33. The Taxpayers own income-producing property in North Carolina.
34. The regular and systematic use of the Taxpayers' marks by the related retail companies at the 130 retail locations in North Carolina is attributed to and inures to the benefit of Taxpayers, thereby protecting and preserving the value and existence of the marks and associated goodwill, Taxpayers' only assets.
35. The use of Taxpayers' marks by the related retail companies in North Carolina is essential to the continued existence of the marks.
36. The quality control and trademark protection activities performed by employees of the related retail companies in North Carolina to protect Taxpayers' marks are attributed to and inure to the benefit of Taxpayers.
37. The activities performed by employees of the related retail companies in North Carolina to assist in maintaining the goodwill associated with Taxpayers' marks are attributed to and inure to the benefit of Taxpayers.

38. The related retail companies, in performing the activities of quality control and protection and preservation of Taxpayers' marks and associated goodwill, act as Taxpayers' agents or representatives in North Carolina.
39. The activities of the related retail companies, acting as Taxpayers' agents or representatives, enable Taxpayers to maintain and enhance a market in this State for merchandise bearing Taxpayers' marks.
40. The Taxpayers' primary source of income, the royalty fees, is dependent upon business activity conducted by employees of the related retail companies in North Carolina, which activity Taxpayers control.
41. The Taxpayers purposefully availed themselves of the benefits of an economic market in North Carolina.
42. The Taxpayers regularly and systematically exploited the North Carolina marketplace for economic gain.
43. The Taxpayers' business activities were purposefully directed towards residents of North Carolina.
44. The Taxpayers operate income-producing business property in North Carolina.
45. The Taxpayers are operating a business activity or enterprise in this State for economic gain.
46. The Taxpayers are "doing business" in this State for corporate income tax purposes.
47. The Taxpayers are "doing business" in this State for corporate franchise tax purposes.
48. The Taxpayers received more than 50% of their income from investments in or dealing in intangible property.
49. The Taxpayers are "excluded corporations" under G.S. 105-130.4(a)(4).
50. The Taxpayers must apportion their business income using the sales factor as determined under G.S. 105-130.4(a)(1).
51. The proposed assessments of corporate income and franchise tax were proper under G.S. 105-241.1.

## DECISION

Taxpayers have petitioned this Board for administrative review of the final decision issued by the Assistant Secretary on September 19, 2000 sustaining the assessment of corporate franchise and income tax for Taxpayers' fiscal year ended January 31, 1994. The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts an administrative hearing, this statute provides in pertinent part: "the Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

When reviewing the Assistant Secretary's Final Decision, the Board must determine, based upon the record, whether the Assistant Secretary properly concluded: (1) that the Taxpayers were "doing business" in this State within the meaning of G.S. 105-130.3 and G.S. 105-114 so as to be subject to the corporate income and franchise tax; and (2) that the Taxpayers were "excluded corporations" within the meaning of G.S. 105-130.4(a)(4).

The Taxpayers' principle arguments for reverse of the Assistant Secretary's Final Decision were: (1) until the recent enactment of legislation, the statute did not authorize taxation of the Taxpayers, (2) physical presence in a state is a constitutional prerequisite for taxation; and (3) since the Taxpayers are not physically present in North Carolina they cannot be taxed by North Carolina. Taxpayers' subsidiary arguments include: (1) no agency relationships exist between the Taxpayers and the related retail entities to which they have licensed their tangible property; and (2) Taxpayers are not "excluded corporations" under G.S. 105-130.4(a).

Upon review of the record, the facts show that Taxpayers are nine wholly-owned subsidiaries of the Limited Stores, Inc. (the “Limited”) an Ohio corporation. The Limited also owns 100% of eight retail companies. Those companies are: Lane Bryant, Inc.; Lerner, Inc.; Victoria’s Secret, Inc., Cacique, Inc.; Abercrombie & Fitch, Inc.; Limited Too, Inc.; Express, Inc.; and Structure, Inc. The Limited and the wholly-owned eight retail subsidiaries are doing business in North Carolina and pay corporate income and franchise taxes here. During the year at issue, the Limited and the eight retail subsidiaries operated over 130 retail locations in North Carolina.

Taxpayers were incorporated in Delaware to hold the trademarks owned by the Limited and the related retail companies. The marks owned by the Taxpayers include “The Limited,” “Limited Too,” “Victoria’s Secrets,” “Express,” “Structure,” “Cacique,” “Abercrombie and Fitch,” “Lane Bryant,” and “Lerner.” The marks are a form of intangible personal property. The Taxpayers do not own or lease any real property or tangible personal property in any state except Delaware. The Taxpayers have no employees in any state. The Taxpayers received the marks they own in separate I.R.C. Section 351 tax-free exchanges with the related retail companies. In these exchanges, the related retail companies transferred the marks to the Taxpayers for little or no consideration. The Taxpayers then entered into a licensing agreement with the corresponding related retail companies. The licensing agreements authorized the related retail companies to continue to use the marks they had previously owned in exchange for royalty payments to the Taxpayers. These agreements required the retail stores to pay Taxpayers a royalty fee based on the percentage of the retail companies’ gross sales. The

Limited and the related retail companies deducted these royalty payments from their income for North Carolina tax purposes. Taxpayers then loaned these royalty payments back to the related companies for use in their retail operations. Taxpayers charged the retail companies a market rate of interest, which generated further deductions for the related retail companies. Taxpayers did not pay any income tax to any state on any of the income received from the related retail companies. For the year at issue (1994), Taxpayers recorded \$301,067,619 in royalty income and \$122,031,344 in interest income from the related retail companies. This accounted for 100% of Taxpayers' income. The net effect of both of these separate transactions upon each related retail company was to significantly reduce the company's taxable income in the states in which it did business by both the royalty payment and the interest expense charged by the Taxpayers.

This Board notes that G.S. 105-122 imposes a franchise tax on every corporation incorporated, domesticated or doing business in this State. For franchise tax purposes, "doing business" is defined as [e]ach and every act, power, or privileges granted by the laws of this State." (See G.S. 105-114(b)(3).) G.S. 105-130.3 imposes a tax upon the State net income of every C corporation doing business in the State. Although the term "doing business" is not defined by statute for corporate income tax purposes, the Secretary has promulgated an administrative rule defining this term. G.S. 105-262 and G.S. 105-264 authorize the Secretary to adopt administrative rules interpreting all laws he administers. Administrative Rule 17 NCAC 5C .0102 provides, in pertinent part, that "the term 'doing business' means the operation of any business enterprise or activity in North Carolina for economic gain, including, but not limited to ..... the owning, renting

or operating of business or income-producing property in North Carolina including but not limited to ..... [t]rademarks [and] tradenames.” Thus, Administrative Rule 17 NCAC 5C .0102 is deemed *prima facie* correct.

Upon administrative review of the Final Decision, the Board determines that the Assistant Secretary properly concluded the Taxpayers were “doing business” in this State and were therefore subject to this State’s corporate income tax and corporate franchise tax. Applying the applicable statutes and administrative rule, the Assistant Secretary concluded that the Taxpayers were doing business in this State because they operate a business activity or enterprise in North Carolina for economic gain. In determining that the Taxpayers were doing business in North Carolina, the Assistant Secretary found that the Taxpayers own valuable intangible property in the form of trademarks, tradenames, and service marks and the goodwill associated with the marks. This property is business or income-producing property. The property is intangible property and, under applicable principles of law, has acquired a business situs where it is used. *See Wheeling Steel Corp. v. Fox*, 298 U.S. 193 (1936). The Taxpayers’ property is used in North Carolina. Consequently, Taxpayers own business or income-producing property in North Carolina.

Applying the principles of trademark law, the Assistant Secretary ruled that Taxpayers’ property cannot exist apart from an established business in which it is used; if the property is not used, the property is considered abandoned and ceases to exist. The Taxpayers’ property therefore exists only where it is used. The Taxpayers’ property is used extensively in North Carolina in connection with established businesses. These

established businesses are the 130 plus North Carolina retail locations of Taxpayers' related retail companies.

The record in this matter reflects that the Taxpayers' marks are permanently affixed to the retail locations and appear on the labels of merchandise sold at the locations. As a result, Taxpayers' marks are used at the retail locations each time employees at the locations sell merchandise. This use, which occurs in North Carolina, preserves the existence of Taxpayers' property.

The record also reflects that the Taxpayers rent their intangible property in North Carolina by licensing the use of the property to their related retail companies, which operate over 130 retail locations in North Carolina. The licensing agreements require the related companies to make royalty payments to Taxpayers for the use of Taxpayers' property. The Taxpayers purposefully license their property for use in this State. The Taxpayers in fact earn significant royalty income from the licensing agreements. The Taxpayers therefore license business or income-producing property in North Carolina.

Based upon the facts, the Assistant Secretary concluded that the Taxpayers were doing business in North Carolina because they are operating a business enterprise or activity in North Carolina for economic gain. Thus, Taxpayers' activities fall within all three of the possible methods set out in Administrative Rule 17 NCAC 5C .0102(a)(5) by which an entity could be doing business in this State. The Taxpayers own business or income-producing property in North Carolina, the Taxpayers license business or income-producing property in North Carolina, and the Taxpayers operate business or income-producing property in North Carolina. Thus, the Board determines that the record

supports the Assistant Secretary's determination that the Taxpayers were "doing business" under the applicable North Carolina statutes and administrative rules and finds no merit in Taxpayers' argument that until the enactment of recent legislation, the statute did not authorize taxation of the Taxpayers.

The Board also determines that the Assistant Secretary properly concluded that the Taxpayers were "excluded corporations" within the meaning of G.S. 105-130.4(a)(4). G.S. 105-130.4(a)(4) defines an "excluded corporation" in pertinent part as "a corporation which receives more than fifty percent (50%) of its ordinary gross income from investments in and/or dealing in intangible property." The Assistant Secretary properly determined that the Taxpayers both "invest" and "deal" in the trademarks, which are intangible property. The Taxpayers received more than 50% of their ordinary gross income from their investments in or dealing in the trademarks. They therefore meet the statutory definition of "excluded corporation" set forth in G.S. 105-130.4(a)(4). Since the Taxpayers are "excluded corporations," G.S. 105-130.4(r) requires the Taxpayers to apportion their business income using the sales factor as determined under G.S. 105-130.4 (l).

Regarding Taxpayers' arguments that the Assistant Secretary's Final Decision should be reversed because physical presence in a state is a constitutional prerequisite for taxation; and since the Taxpayers are not physically present in North Carolina they cannot be taxed by North Carolina; the Tax Review Board, which is an administrative body, does not have the authority or jurisdiction to rule upon the constitutionality of a statute. *Great American Insurance Company v. Gold*, 254 N.C. 168 (1961). Since these

contentions involve constitutional issues, the Tax Review Board lacks authority or jurisdiction to address them. Thus, Taxpayers' constitutional claims are not issues that the Tax Review Board is empowered to determine.

The Board having conducted an administrative hearing in this matter, and having considered the petition, briefs, the whole record, the Assistant Secretary's final decision, the parties' arguments and the authorities cited, concludes that the findings of fact made by the Assistant Secretary in the final decision were fully supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the final decision of the Secretary of Revenue should be confirmed.

In confirming the final decision in this matter, the Board takes administrative notice that the Assistant Secretary modified the proposed corporate franchise and income tax assessments for tax year 1994 by granting the Taxpayers' motion to waive the penalties imposed against them for tax year 1994. Although there is ample evidence in the record supporting the Department of Revenue's original imposition of penalties for tax year 1994, since the decision to waive penalties imposed by the Department of Revenue falls within the discretion of the Secretary of Revenue, this Board defers to the Secretary's determination.

**WHEREFORE, THE TAX REVIEW BOARD ORDERS, ADJUDGES AND DECREES** that the Final Decision entered by the Assistant Secretary in this matter on September 19, 2000 be and is hereby **Confirmed** in its entirety.

Made and entered into the 7<sup>th</sup> day of May, 2002.

**TAX REVIEW BOARD**



Signature *Richard H. Moore*

Richard H. Moore, Chairman  
State Treasurer

Signature *Jo Anne Sanford*

Jo Anne Sanford, Member  
Chair, Utilities Commission

Signature *N. L. Allen*

Noel L. Allen, Appointed Member

## EXHIBIT A

Documents submitted by the Department of Revenue:

- D-1(a) Spreadsheet summary of corporate income tax, interest, penalty, and total assessments for tax years 1/31/92, 1/31/93, and 1/31/94 for A&F Trademark, Inc.; Caciqueco, Inc.; Expressco, Inc.; Lanco, Inc.; Lernco, Inc.; Limco Investments, Inc.; Limtoo, Inc.; Structureco Inc.; and V. Secret Stores, Inc.
  
- D-1(b) Spreadsheet summary of franchise tax, interest, penalty, and total assessments for tax years 1/31/92, 1/31/93, and 1/31/94 for A&F Trademark, Inc.; Caciqueco, Inc.; Expressco, Inc.; Lanco, Inc.; Lernco, Inc.; Limco Investments, Inc.; Limtoo, Inc.; Structureco Inc.; and V. Secret Stores, Inc.
  
- D-1(c)(1) Notices of corporate income tax assessments, franchise tax assessments, field auditor's report, and audit worksheets for tax years 1/31/92, 1/31/93, and 1/31/94 for A&F Trademark, Inc.
  
- D-1(c)(2) Notices of corporate income tax assessments, franchise tax assessments, field auditor's report, and audit worksheets for tax years 1/31/92, 1/31/93, and 1/31/94 for Caciqueco, Inc.
  
- D-1(c)(3) Notices of corporate income tax assessments, franchise tax assessments, field auditor's report, and audit worksheets for tax years 1/31/92, 1/31/93, and 1/31/94 for Expressco, Inc.
  
- D-1(c)(4) Notices of corporate income tax assessments, franchise tax assessments, field auditor's report, and audit worksheets for tax years 1/31/92, 1/31/93, and 1/31/94 for Lanco, Inc.
  
- D-1(c)(5) Notices of corporate income tax assessments, franchise tax assessments, field auditor's report, and audit worksheets for tax years 1/31/92, 1/31/93, and 1/31/94 for Lernco, Inc.
  
- D-1(c)(6) Notices of corporate income tax assessments, franchise tax assessments, field auditor's report, and audit worksheets for tax years 1/31/92, 1/31/93, and 1/31/94 for Limco Investments, Inc.
  
- D-1(c)(7) Notices of corporate income tax assessments, franchise tax assessments, field auditor's report, and audit worksheets for tax years 1/31/92, 1/31/93, and 1/31/94 for Limtoo, Inc.

- D-1(c)(8) Notices of corporate income tax assessments, franchise tax assessments, field auditor's report, and audit worksheets for tax years 1/31/92, 1/31/93, and 1/31/94 for Structureco, Inc.
- D-1(c)(9) Notices of corporate income tax assessments, franchise tax assessments, field auditor's report, and audit worksheets for tax years 1/31/92, 1/31/93, and 1/31/94 for Victoria Secret Stores, Inc.
- D-2(a) Correspondence dated April 22, 1996 to Department of Revenue from Morrison & Foerster protesting notices of tax assessment and requesting a consolidated tax hearing.
- D-2(b) Correspondence dated September 15, 1997 to Jasper L. Cummings, Jr. from Michael A. Hannah, Assistant Secretary of Revenue, reserving the week of June 8, 1998 for an administrative tax hearing.
- D-2(c) Correspondence dated April 14, 1998 to Jasper L. Cummings, Jr. from Michael A. Hannah, Assistant Secretary of Revenue, extending the dates for administrative hearing to include Friday, June 12, 1998.
- D-3(a) Correspondence dated April 14, 1998 from Kay Miller Hobart, Assistant Attorney General, to Hollis Hyans of Morrison & Foerster concerning stipulations to a test company case.
- D-3(b) Draft stipulation of Express & Expressco as "test case" by Hollis Hyans of Morrison & Foerster dated March 26, 1998.
- D-3(c) Correspondence dated April 30, 1998 from Hollis Hyans to Donna Powell, Administrative Officer at the Department, responding to Departmental request for information dated April 15, 1998.
- D-4(a) Correspondence dated April 15, 1998 from Donna Powell, Administrative Officer, to Hollis Hyans of Morrison & Foerster requesting detailed factual information and other documents pertinent to facts and circumstances of protested issues.
- D-4(b) Correspondence dated April 30, 1998 from Hollis Hyans of Morrison & Foerster to Donna Powell responding to Departmental request for information dated April 15, 1998.
- D-4(c) Correspondence dated May 13, 1998 from Jack Harper, Director of the Department's Corporate, Excise, and Insurance Tax Division to Hollis Hyans of Morrison & Foerster requesting additional factual information pertinent to facts and circumstances of protested issues.

- D-4(d) Correspondence dated June 6, 1998 from Jack Harper to Jasper L. Cummings, Jr. summarizing the information requested by the Department relative to the facts and circumstances of the protested issues not received as of June 6, 1998.
- D-4(e) Correspondence dated May 29, 1998 from Jasper L. Cummings, Jr. to Jack Harper advising Department of status of requested documents pertinent to facts and circumstances of protested issues.
- D-4(f) Correspondence dated June 5, 1998 from Jasper L. Cummings, Jr. to Donna Powell forwarding information requested pursuant to a review of federal consolidated 1120 tax returns in office of Jasper L. Cummings, Jr.
- D-5 Graphic presentation of the chronology of transactions between the Limited Inc. and subsidiaries concerning the creation of affiliated corporations, and the transfer, sublicensing, or assignment of intangible assets.
- D-6(a) Initial Board of Directors' minutes of Limco Investments, Inc. dated January 29, 1981.
- D-6(b) Certificate of Incorporation from Delaware Secretary of State's Office for Limco Investments, Inc. dated December 19, 1980.
- D-6(c) Corporate Bylaws for Limco Investments, Inc.
- D-7(a) Assignment of trade/service marks from The Limited Stores, Inc. to Limco Investments, Inc. dated January 28, 1981.
- D-7(b) Legal name change document filed with the State of Delaware certifying that "Limco Investments, Inc." changed its name to "Limco, Inc." dated April 25, 1994.
- D-8(a) U.S. Patent Registration printout of record of trade/service mark "The Limited" owned by Limco, Inc.
- D-8(b) Portfolio printouts of Limco, Inc.'s "The Limited" trademarks in foreign jurisdictions.
- D-9(a) Related Company Agreement made and entered into February 1, 1981 between Limco Investments, Inc. and The Limited Stores, Inc.
- D-9(b) Amendment #1 to Related Company Agreement made and entered into June 29, 1981 between Limco Investments, Inc. and The Limited Stores, Inc.

- D-9(c) Amendment #3 to Related Company Agreement made and entered into October 22, 1987 between Limco Investments, Inc. and The Limited Stores, Inc.
- D-9(d) Amendment #4 to Related Company Agreement made and entered into May 1, 1989 between Limco Investments, Inc. and The Limited Stores, Inc.
- D-9(e) Amendment #5 to Related Company Agreement made and entered into September 15, 1992 between Limco Investments, Inc. and The Limited Stores, Inc.
- D-10 Valuation study of tradename "The Limited" prepared by Arthur Consulting Group dated 1/29/94.
- D-11(a) License Agreement made and entered into September 10, 1987 by and between Limco, Investments, Inc. and Expressco, Inc.
- D-11(b) Sublease agreement made and entered into November 30, 1993 by and between Delaware Corporate Management, and Limco Investments, Inc.
- D-11(c) Board of Directors' minutes dated March 17, 1987 for Limco Investments, Inc.
- D-12(a) Board of Directors' minutes dated September 10, 1987 for Limco Investments, Inc.
- D-12(b) Board of Directors' minutes dated June 3, 1987 for Limco Investments, Inc.
- D-13 Board of Directors' minutes dated December 1, 1987 for Limco Investments, Inc.
- D-14 Board of Directors' minutes dated March 1, 1988 for Limco Investments, Inc.
- D-15 Board of Directors' minutes dated June 15, 1988 for Limco Investments, Inc.
- D-16 Board of Directors' minutes dated September 20, 1988 for Limco Investments, Inc.
- D-17 Trade Property License Agreement between Limco Investments, Inc. and Aurora Resources, LP (unrelated third party) dated 8/24/88.

- D-18(a) Board of Directors' minutes dated March 12, 1991 for Limco Investments, Inc.
- D-18(b) Board of Directors' minutes dated December 6, 1988 for Limco Investments, Inc.
- D-18(c) Board of Directors' minutes dated June 4, 1991 for Limco Investments, Inc.
- D-18(d) Board of Directors' minutes dated September 9, 1991 for Limco Investments, Inc.
- D-19 Board of Directors' minutes dated December 11, 1991 for Limco Investments, Inc.
- D-20(a) Board of Directors' minutes dated March 9, 1993 for Limco Investments, Inc.
- D-20(b) Board of Directors' minutes dated June 8, 1993 for Limco Investments, Inc.
- D-20(c) Board of Directors' minutes dated March 10, 1992 for Limco Investments, Inc.
- D-20(d) Board of Directors' minutes dated June 9, 1992 for Limco Investments, Inc.
- D-20(e) Board of Directors' minutes dated September 10, 1992 for Limco Investments, Inc.
- D-20(f) Board of Directors' minutes dated December 9, 1992 for Limco Investments, Inc.
- D-21(a) Board of Directors' minutes dated September 21, 1993 for Limco Investments, Inc.
- D-21(b) Board of Directors' minutes dated December 1, 1993 for Limco Investments, Inc.
- D-22 Related Company Agreement made and entered between Expressco and The Limited Stores, Inc.
- D-23(a) License Agreement made and entered into March 31, 1989 between Limco Investments, Inc. and Expressco, Inc.

- D-23(b) Certificate of Incorporation from State of Delaware Secretary of State's Office for Expressco, Inc. dated September 9, 1987.
- D-23(c) State of Delaware 1992 annual franchise tax report for Expressco dated February 12, 1993.
- D-23(d) State of Delaware 1993 annual franchise tax report for Expressco dated February, 1994.
- D-23(e) State of Delaware 1994 annual franchise tax report for Expressco dated February 1, 1995.
- D-23(f) Corporate Bylaws for Expressco, Inc.
- D-23(g) Sublease Agreement dated November 30, 1993 between Delaware Corporate Management, Inc. and Expressco, Inc.
- D-23(h) Initial Board of Directors' minutes dated September 10, 1987 for Expressco, Inc.
- D-24 Valuation study of trade/service mark "Campagne Internationale Express" prepared by Price Waterhouse dated January 28, 1995.
- D-25(a) U.S. Patent Registration printout of record of trade/service mark "Exp and Design" owned by Expressco, Inc.
- D-25(b) Portfolio printouts of Expressco Inc.'s trademarks registered in foreign jurisdictions.
- D-26 Board of Directors' minutes dated December 1, 1987 for Expressco, Inc.
- D-27(a) Board of Directors' minutes dated March 1, 1988 for Expressco, Inc.
- D-27(b) Board of Directors' minutes dated June 15, 1988 for Expressco, Inc.
- D-27(c) Board of Directors' minutes dated September 20, 1988 for Expressco, Inc.
- D-27(d) Board of Directors' minutes dated December 6, 1988 for Expressco, Inc.
- D-27(e) Board of Directors' minutes dated March 12, 1991 for Expressco, Inc.
- D-27(f) Board of Directors' minutes dated June 4, 1991 for Expressco, Inc.
- D-27(g) Board of Directors' minutes dated September 9, 1991 for Expressco, Inc.
- D-27(h) Board of Directors' minutes dated December 11, 1991 for Expressco, Inc.

- D-28(a) Board of Directors' minutes dated March 10, 1992 for Expressco, Inc.
- D-28(b) Board of Directors' minutes dated June 9, 1992 for Expressco, Inc.
- D-28(c) Board of Directors' minutes dated September 10, 1992 for Expressco, Inc.
- D-28(d) Board of Directors' minutes dated December 9, 1992 for Expressco, Inc.
- D-29(a) Board of Directors' minutes dated March 9, 1993 for Expressco, Inc.
- D-29(b) Board of Directors' minutes dated June 8, 1993 for Expressco, Inc.
- D-29(c) Board of Directors' minutes dated September 21, 1993 for Expressco, Inc.
- D-29(d) Board of Directors' minutes dated December 1, 1993 for Expressco, Inc.
- D-30(a) Initial Board minutes dated September 9, 1991 for Limtoo, Inc.
- D-30(b) Certificate of Incorporation from State of Delaware Secretary of State's Office for Limtoo, Inc. dated August 1, 1991.
- D-30(c) Bylaws of Limtoo, Inc.
- D-31(a) License Agreement made and entered into December 31, 1991 between Limco Investments, Inc. and Limtoo, Inc.
- D-31(b) Board of Directors' minutes dated December 11, 1991 for Limtoo, Inc.
- D-32 Related Company Agreement between Limtoo, Inc. and Limited Too, Inc. dated September 9, 1991.
- D-33 Copy of "Valuation of the Limited Too Tradename for Limtoo, Inc." prepared by Arthur Consulting Group dated July 1, 1992.
- D-34(a) Board of Directors' minutes dated March 9, 1993 for Limtoo, Inc.
- D-34(b) Board of Directors' minutes dated March 10, 1992 for Limtoo, Inc.
- D-34(c) Board of Directors' minutes dated June 9, 1992 for Limtoo, Inc.
- D-34(d) Board of Directors' minutes dated September 10, 1992 for Limtoo, Inc.
- D-34(e) Board of Directors' minutes dated December 9, 1992 for Limtoo, Inc.
- D-34(f) Board of Directors' minutes dated June 8, 1993 for Limtoo, Inc.

- D-35(a) Board of Directors' minutes dated September 21, 1993 for Limtoo, Inc.
- D-35(b) Board of Directors' minutes dated December 1, 1993 for Limtoo, Inc.
- D-35(c) Income Statement Analysis for Limtoo, Inc. for tax years ended 1992 through 1994.
- D-35(d) Balance Sheet and Statement of Income and Retained Earnings for Limtoo, Inc. for tax year ended 1992.
- D-35(e) Balance Sheet and Statement of Income and Retained Earnings for Limtoo, Inc. for tax year ended 1993.
- D-35(f) Balance Sheet and Statement of Income and Retained Earnings for Limtoo, Inc. for tax year ended 1994.
- D-36 Board of Directors' minutes dated December 11, 1991 for Limtoo, Inc.
- D-37(a) U.S. Patent Registration printout of record of trade/service mark "STR" owned by Structureco, Inc.
- D-37(b) Portfolio printout of Structureco, Inc. trademark registered in foreign jurisdictions.
- D-37(c) Certificate of Incorporation from State of Delaware Secretary of State's Office for Structureco, Inc. dated August 1, 1991.
- D-37(d) Corporate Bylaws of Structureco, Inc.
- D-38 Initial minutes of Board of Directors' meeting of Structureco, Inc. dated December 11, 1991.
- D-39(a) Related Company Agreement made and entered into December 11, 1991 by and between Structureco, Inc. and Express, Inc.
- D-39(b) Related Company Agreement made and entered into December 11, 1991 between Structureco, Inc. and Structure, Inc.
- D-40 Valuation study of the tradename "Structure" prepared by Arthur Consulting Group, Inc.
- D-41(a) Board of Directors' minutes dated June 8, 1993 for Structureco, Inc.
- D-41(b) Board of Directors' minutes dated March 10, 1992 for Structureco, Inc.
- D-41(c) Board of Directors' minutes dated June 9, 1992 for Structureco, Inc.

- D-41(d) Board of Directors' minutes dated September 10, 1992 for Structureco, Inc.
- D-41(e) Board of Directors' minutes dated December 9, 1992 for Structureco, Inc.
- D-41(f) Board of Directors' minutes dated March 9, 1993 for Structureco, Inc.
- D-42(a) Board of Directors' minutes dated September 21, 1993 for Structureco, Inc.
- D-42(b) Board of Directors' minutes dated December 1, 1993 for Structureco, Inc.
- D-42(c) Income Statement Analysis of Structureco, Inc. for tax years ended 1992 through 1994.
- D-42(d) Balance Sheet and Statement of Income and Retained Earnings for Structureco, Inc. for tax year ended 1992.
- D-42(e) Balance Sheet and Statement of Income and Retained Earnings for Structureco, Inc. for tax year ended 1993.
- D-42(f) Balance Sheet and Statement of Income and Retained Earnings for Structureco, Inc. for tax year ended 1994.
- D-43(a) Initial Board of Directors' minutes dated September 9, 1991 for Caciqueco, Inc.
- D-43(b) Certificate of Incorporation from State of Delaware Secretary of State's Office for Caciqueco, Inc. dated August 1, 1991.
- D-43(c) Bylaws of Caciqueco, Inc.
- D-44(a) Assignment of Trademark "Cacique" from The Limited Stores, Inc. to Caciqueco, Inc. dated September 9, 1991.
- D-44(b) Related Company Agreement made and entered into as of January 1, 1991 by and between Caciqueco, Inc. and Cacique, Inc.
- D-45(a) U.S. Patent registration printout of record of tradename "Lingerie Cacique Care Essentials Design" owned by Caciqueco, Inc.
- D-45(b) Portfolio printout of Caciqueco, Inc. tradenames registered in foreign jurisdictions.

- D-46 Related Company Agreement made and entered into January 1, 1992 by and between Caciqueco, Inc. and Cacique, Inc.
- D-47 Valuation study of the tradename "Cacique" prepared by Arthur Consulting Group, Inc.
- D-48(a) Board of Directors' minutes dated December 11, 1991 for Caciqueco, Inc.
- D-48(b) Board of Directors' minutes dated March 10, 1992 for Caciqueco, Inc.
- D-48(c) Board of Directors' minutes dated June 9, 1992 for Caciqueco, Inc.
- D-48(d) Board of Directors' minutes dated September 10, 1992 for Caciqueco, Inc.
- D-48(e) Board of Directors' minutes dated December 9, 1992 for Caciqueco, Inc.
- D-48(f) Board of Directors' minutes dated March 9, 1993 for Caciqueco, Inc.
- D-48(g) Board of Directors' minutes dated June 8, 1993 for Caciqueco, Inc.
- D-49(a) Board of Directors' minutes dated September 21, 1993 for Caciqueco, Inc.
- D-49(b) Board of Directors' minutes dated December 1, 1993 for Caciqueco, Inc.
- D-49(c) Income Statement Analysis of Caciqueco, Inc. for tax years ended 1992 through 1994.
- D-49(d) Balance Sheet and Statement of Income and Retained Earnings for Caciqueco, Inc. for tax year ended 1992.
- D-49(e) Balance Sheet and Statement of Income and Retained Earnings for Caciqueco, Inc. for tax year ended 1993.
- D-49(f) Balance Sheet and Statement of Income and Retained Earnings for Caciqueco, Inc. for tax year ended 1994.
- D-50(a) Assignment of trademark "Victoria's Secret" from Victoria's Secret, Inc. to V. Secret, Inc. dated January 26, 1987.
- D-50(b) Certificate of Incorporation from State of Delaware Secretary of State's Office for V. Secret, Inc. dated November 2, 1983.
- D-50(c) Certificate of Incorporation from State of Delaware Secretary of State's Office for V. Secret Stores, Inc. dated December 1, 1988.

- D-50(d) Certificate of Incorporation from State of Delaware Secretary of State's Office for Victoria's Secret, Inc. dated January 9, 1989.
- D-51(a) Related Company Agreement made and entered into January 1, 1987 between V. Secrets, Inc. and Victoria's Secret Inc.
- D-51(b) Related Company Agreement made and entered into January 1, 1989 between V. Secret Stores, Inc. and Victoria's Secret, Inc.
- D-52(a) License Agreement made and entered into January 1, 1989 between V. Secret, Inc. and V. Secret Stores, Inc.
- D-52(b) Board of Directors' minutes dated March 17, 1987 for V. Secret, Inc.
- D-52(c) Board of Directors' minutes dated June 3, 1987 for V. Secret, Inc.
- D-52(d) Board of Directors' minutes dated September 10, 1987 for V. Secret, Inc.
- D-52(e) Board of Directors' minutes dated December 1, 1987 for V. Secret, Inc.
- D-52(f) Board of Directors' minutes dated March 1, 1988 for V. Secret, Inc.
- D-52(g) Board of Directors' minutes dated June 15, 1988 for V. Secret, Inc.
- D-52(h) Board of Directors' minutes dated September 20, 1988 for V. Secret, Inc.
- D-52(i) Board of Directors' minutes dated March 12, 1991 for V. Secret Stores, Inc.
- D-52(j) Board of Directors' minutes dated June 4, 1991 for V. Secret Stores, Inc.
- D-52(k) Board of Directors' minutes dated September 9, 1991 for V. Secret Stores, Inc.
- D-52(l) Board of Directors' minutes dated December 11, 1991 for V. Secret Stores, Inc.
- D-52(m) Board of Directors' minutes dated March 10, 1992 for V. Secret Stores, Inc.
- D-52(n) Board of Directors' minutes dated June 9, 1992 for V. Secret Stores, Inc.
- D-52(o) Board of Directors' minutes dated September 10, 1992 for V. Secret Stores, Inc.

- D-52(p) Board of Directors' minutes dated December 9, 1992 for V. Secret Stores Inc.
- D-52(q) Board of Directors' minutes dated March 9, 1993 for V. Secret Stores, Inc.
- D-52(r) Board of Directors' minutes dated June 8, 1993 for V. Secret Stores, Inc.
- D-52(s) Board of Directors' minutes dated September 21, 1993 for V. Secret Stores, Inc.
- D-52(t) Board of Directors' minutes dated December 1, 1993 for V. Secret Stores, Inc.
- D-52(u) Income Statement Analysis of V. Secret Stores, Inc. for tax years ended 1992 through 1994.
- D-52(v) Balance Sheet and Statement of Income and Retained Earnings for V. Secret Stores, Inc. for tax year ended 1992.
- D-52(w) Balance Sheet and Statement of Income and Retained Earnings for V. Secret Stores, Inc. for tax year ended 1993.
- D-52(x) Balance Sheet and Statement of Income and Retained Earnings for V. Secret Stores, Inc. for tax year ended 1994.
- D-52(y) "Subscription to Shares" of V. Secret Stores, Inc. dated December 1, 1988.
- D-52(z) Sublease Agreement made and entered into November 30, 1993 by and between Delaware Corporate Management, Inc. and V. Secret Catalogue, Inc.
- D-53 Trade Property License Agreement between V. Secret, Inc. and Aurora Resources, LP dated August 24, 1988.
- D-54 Valuation Study of tradename "Victoria's Secret" as compiled by Price Waterhouse, LLP dated May 24, 1995.
- D-55(a) U.S. Patent Registration printout of record of trade/service mark "LB for Short" owned by Lanco, Inc.
- D-55(b) Portfolio printouts of Lanco, Inc.'s "Lane Byrant" trademarks in foreign jurisdictions.

- D-56(a) Assignment of trade/service marks "Lane Bryant," "Smart Size," "LB," "LB for Short," and "Nancy's Choice" from Lane Bryant, Inc. to Lanco, Inc.
- D-56(b) Certificate of Incorporation from State of Delaware Secretary of State's Office for Lanco, Inc. dated December 15, 1982.
- D-56(c) Bylaws of Lanco, Inc.
- D-56(d) Sublease Agreement made and entered into November 30, 1993 between Delaware Corporate Management, Inc. and Lanco, Inc.
- D-57(a) Related Company Agreement made and entered into February 2, 1986 between Lanco, Inc. and Lane Bryant, Inc.
- D-57(b) Board of Directors' minutes dated March 17, 1987 for Lanco, Inc.
- D-57(c) Board of Directors' minutes dated September 10, 1987 for Lanco, Inc.
- D-57(d) Board of Directors' minutes dated June 3, 1987 for Lanco, Inc.
- D-57(e) Board of Directors' minutes dated December 1, 1987 for Lanco, Inc.
- D-57(f) Board of Directors' minutes dated March 1, 1988 for Lanco, Inc.
- D-57(g) Board of Directors' minutes dated June 15, 1998 for Lanco, Inc.
- D-57(h) Board of Director's minutes dated September 20, 1988 for Lanco, Inc.
- D-57(i) Board of Directors' minutes dated December 6, 1988 for Lanco, Inc.
- D-57(j) Board of Directors' minutes dated March 10, 1992 for Lanco, Inc.
- D-57(k) Board of Directors' minutes dated June 9, 1992 for Lanco, Inc.
- D-57(l) Board of Directors' minutes dated September 10, 1992 for Lanco, Inc.
- D-57(m) Board of Directors' minutes dated December 9, 1992 for Lanco, Inc.
- D-57(n) Board of Directors' minutes dated March 12, 1991 for Lanco, Inc.
- D-57(o) Board of Directors' minutes dated June 4, 1991 for Lanco, Inc.
- D-58(a) Board of Directors' minutes dated March 10, 1992 for Lanco, Inc.

- D-58(b) Board of Directors' minutes dated June 9, 1992 for Lanco, Inc.
- D-58(c) Board of Directors' minutes dated September 10, 1992 for Lanco, Inc.
- D-58(d) Board of Directors' minutes dated December 9, 1992 for Lanco, Inc.
- D-58(e) Board of Directors' minutes dated March 9, 1993 for Lanco, Inc.
- D-58(f) Board of Directors' minutes dated June 8, 1993 for Lanco, Inc.
- D-58(g) Board of Directors' minutes dated September 21, 1993 for Lanco, Inc.
- D-58(h) Board of Directors' minutes dated December 1, 1993 for Lanco, Inc.
- D-59 Valuation study of trade/service mark "Lane Bryant" as compiled by Price Waterhouse, LLP dated January 28, 1995.
- D-60(a) Assignment of trade/service mark "Lerner" from Associated Lerner Shops of America, Inc. to Lerner, Inc. dated June 6, 1985.
- D-60(b) Certificate of Incorporation from State of Delaware Secretary of State's Office for Lernco, Inc. dated May 2, 1985.
- D-60(c) Corporate Bylaws for Lernco.
- D-60(d) Sublease Agreement made and entered into January 9, 1989 between Delaware Corporate Management and Lernco, Inc.
- D-61(a) U.S. Patent Registration printout of record of trade/service mark "Lerner" owned by Lernco, Inc.
- D-61(b) Portfolio printouts of Lernco, Inc.'s "Lerner" trademarks in foreign jurisdictions.
- D-62(a) Related Company Agreement made and entered into June 6, 1985 between Lernco, Inc. and Lerner Stores, Inc.
- D-62(b) Board of Directors' minutes dated March 12, 1991 for Lernco, Inc.
- D-62(c) Board of Directors' minutes dated June 4, 1991 for Lernco, Inc.
- D-62(d) Board of Directors' minutes dated September 9, 1991 for Lernco, Inc.
- D-62(e) Board of Directors' minutes dated December 11, 1991 for Lernco, Inc.
- D-62(f) Board of Directors' minutes dated March 10, 1992 for Lernco, Inc.

- D-62(g) Board of Directors' minutes dated June 9, 1992 for Lernco, Inc.
- D-62(h) Board of Directors' minutes dated September 10, 1992 for Lernco, Inc.
- D-62(i) Board of Directors' minutes dated December 9, 1992 for Lernco, Inc.
- D-63(a) Board of Directors' minutes dated March 9, 1993 for Lernco, Inc.
- D-63(b) Board of Directors' minutes dated June 8, 1993 for Lernco, Inc.
- D-63(c) Board of Directors' minutes dated September 21, 1993 for Lernco, Inc.
- D-63(d) Board of Directors' minutes dated December 1, 1993 Lernco, Inc.
- D-63(e) Income Statement Analysis of Lernco, Inc. for tax years ended 1992-1994.
- D-63(f) Balance Sheet and Statement of Income and Retained Earnings for Lernco, Inc. for tax year ended 1992.
- D-63(g) Balance Sheet and Statement of Income and Retained Earnings for Lernco, Inc. for tax year ended 1993.
- D-63(h) Balance Sheet and Statement of Income and Retained Earnings for Lernco, Inc. for tax year ended 1994.
- D-64 Valuation study of trade/service marks Lerner as compiled by Price Waterhouse, LLP dated October 31, 1989.
- D-65(a) U.S. Patent Registration printout of record of trade/service mark "Abercrombie & Fitch" owned by A&F Trademark, Inc.
- D-65(b) Portfolio printouts of A&F Trademark, Inc.'s "Abercrombie & Fitch" trademark in foreign jurisdictions.
- D-66(a) Related Company Agreement made and entered into February 2, 1988 between A&F Trademark, Inc. and Abercrombie & Fitch, Inc.
- D-66(b) Certificate of Incorporation from State of Delaware Secretary of State's Office for A&F Trademark, Inc. dated February 2, 1988.
- D-66(c) Corporate Bylaws for A&F Trademark, Inc.
- D-66(d) Board of Directors' minutes dated March 12, 1991 for A&F Trademark, Inc.
- D-66(e) Board of Directors' minutes dated June 4, 1991 for A&F Trademark, Inc.

- D-66(f) Board of Directors' minutes dated September 9, 1991 for A&F Trademark, Inc.
- D-66(g) Board of Directors' minutes dated December 11, 1991 for A&F Trademark, Inc.
- D-66(h) Board of Directors' minutes dated March 10, 1992 for A&F Trademark, Inc.
- D-66(i) Board of Directors' minutes dated June 9, 1992 for A&F Trademark, Inc.
- D-66(j) Board of Directors' minutes dated September 10, 1992 for A&F Trademark, Inc.
- D-66(k) Board of Directors' minutes dated December 9, 1992 for A&F Trademark, Inc.
- D-66(l) Board of Directors' minutes dated March 9, 1993 for A&F Trademark, Inc.
- D-66(m) Board of Directors' minutes dated June 8, 1993 for A&F Trademark, Inc.
- D-67 Board of Directors' minutes dated September 21, 1993 for A&F Trademark, Inc.
- D-68 Graphic of the Limited, Inc. and its subsidiaries displaying the licensing relationship between the retail operation and trademark entity.
- D-69(a) Letter outlining services provided to Delaware Holding Companies from Gunnip & Company, a nexus service provider, dated January 5, 1987.
- D-69(b) Printout of corporations listing "1105 North Market Street, Wilmington, Delaware" as their principal physical address.
- D-69(c) Resolution authorizing Wilmington Trust to act as a depository of funds for Limtoo, Inc. dated September 9, 1991.
- D-69(d) Invoice from Delaware Corporate Management to Limco Investments, Inc. dated January 19, 1993 for accounting services.
- D-70 Summary of Trademark Companies' Royalty and Interest Income for tax years ended 1992 through 1994.
- D-71 Graphic displaying "Circular Flow of Transactions" between retail companies and their related trademark companies.

- D-72 Analysis of gross income and expenses of trademark companies and their related retail companies.
- D-73(a) "Analysis of accrued royalties" for Expressco, Inc. for taxable years ended 1992, 1993, and 1994.
- D-73(b) Balance Sheet for Expressco, Inc. for taxable years ended 1992, 1993, and 1994.
- D-73(c) Wilmington Trust Statement of Account for Expressco, Inc. for taxable years ended January 31, 1992, January 29, 1993, and January 31, 1994.
- D-73(d) Wilmington Trust Bank Statement for Expressco, Inc. dated April 3, 1992.
- D-73(e) Note between Express, Inc. and Expressco, Inc. dated September 20, 1992.
- D-73(f) "Analysis of accrued royalties" for Limco Investments, Inc. for taxable years ended 1992, 1993, and 1994.
- D-73(g)(1) Balance Sheets for Limco Investments, Inc. for taxable year ended 1992.
- D-73(g)(2) Balance Sheets for Limco Investments, Inc. for taxable year ended 1994.
- D-73(h)(1) Wilmington Trust Statements of Account for Limco Investments, Inc. for taxable year ended 1992.
- D-73(h)(2) Wilmington Trust Statements of Account for Limco Investments, Inc. for taxable year ended 1993.
- D-73(h)(3) Wilmington Trust Statements of Account for Limco Investments, Inc. for taxable year ended 1994.
- D-73(i)(1) Wilmington Trust Bank Statements for Limco Investments, Inc. dated April 3, 1992.
- D-73(i)(2) Wilmington Trust Bank Statements for Limco Investments, Inc. dated January 29, 1993.
- D-73(j) Note between the Limited Stores, Inc. and Limco, Inc. dated September 20, 1992.
- D-73(k) "Analysis of accrued royalties" for V. Secret Stores, Inc. for taxable year ended 1992, 1993, and 1994.

- D-73(l)(1) Balance Sheets for V. Secret Stores, Inc. for taxable year ended February 1, 1992.
- D-73(l)(2) Balance Sheets for V. Secret Stores, Inc. for taxable year ended January 30, 1993.
- D-73(l)(3) Balance Sheets for V. Secret Stores, Inc. for taxable year ended January 29, 1994.
- D-73(m)(1) Statements of Income and Retained Earnings for V. Secret Stores, Inc. for taxable year ended February 1, 1992.
- D-73(m)(2) Statements of Income and Retained Earnings for V. Secret Stores, Inc. for taxable year ended January 30, 1993.
- D-73(m)(3) Statements of Income and Retained Earnings for V. Secret Stores, Inc. for taxable year ended January 29, 1994.
- D-73(n)(1) Wilmington Trust Statements of Account for V. Secret Stores, Inc. for taxable year ended January 31, 1992.
- D-73(n)(2) Wilmington Trust Statements of Account for V. Secret Stores, Inc. for taxable year ended January 29, 1993.
- D-73(n)(3) Wilmington Trust Statements of Account for V. Secret Stores, Inc. for taxable year ended January 28, 1994.
- D-73(o)(1) Wilmington Trust Bank Statements for V. Secret Stores, Inc. dated April 3, 1992.
- D-73(o)(2) Wilmington Trust Bank Statements for V. Secret Stores, Inc. dated January 28, 1994.
- D-73(p)(1) Notes between Victoria's Secret Stores, Inc. and V. Secret Stores, Inc. dated September 20, 1992.
- D-73(p)(2) Notes between Victoria's Secret Stores, Inc. and V. Secret Stores, Inc. dated November 9, 1992.
- D-74(a) Note between Express, Inc. and Expressco, Inc. dated November 9, 1992.
- D-74(b) Note between Victoria's Secret Stores, Inc. and V. Secret Stores, Inc. dated February 7, 1992.
- D-74(c) Note between Abercrombie & Fitch, Inc. and A&F Trademark, Inc. dated November 9, 1992.

- D-74(d) Note between Victoria's Secret Stores, Inc. and V. Secret Stores, Inc. dated August 10, 1992.
- D-74(e) Note between Victoria's Secret Stores, Inc. and V. Secret Stores, Inc. dated May 12, 1992.
- D-74(f) Note between Lane Bryant, Inc. and Lanco, Inc. dated March 20, 1989.
- D-74(g) Note between Lane Bryant, Inc. and Lanco, Inc. dated September 20, 1990.
- D-74(h) Note between Abercrombie & Fitch, Inc. and A&F Trademark, Inc. dated September 20, 1992.
- D-74(i) Note between Abercrombie & Fitch, Inc. and A&F Trademark, Inc. dated May 12, 1992.
- D-74(j) Note between Lane Bryant, Inc. and Lanco, Inc. dated September 20, 1992.
- D-74(k) Note between Lerner Stores, Inc. and Lernco, Inc. dated September 20, 1992.
- D-74(l) Note between Lane Bryant, Inc. and Lanco, Inc. dated September 20, 1989.
- D-74(m) Note between Lane Bryant, Inc. and Lanco, Inc. dated September 20, 1991.
- D-74(n) Note between Lane Bryant, Inc. and Lanco, Inc. dated September 20, 1992.
- D-74(o) Note between Lane Bryant, Inc. and Lanco, Inc. dated March 20, 1993.
- D-74(p) Note between Lane Bryant, Inc. and Lanco, Inc. dated September 20, 1992.
- D-74(q) Note between Lane Bryant, Inc. and Lanco, Inc. dated March 20, 1993.
- D-74(r) Note between Lane Bryant, Inc. and Lanco, Inc. dated September 20, 1993.
- D-74(s) Note between Lane Bryant, Inc. and Lanco, Inc. dated March 20, 1991.

- D-75(a) Related Company Agreement Amendment # 3 made and entered into October 22, 1987 between Limco, Investments, Inc. and The Limited Stores, Inc.
- D-75(b) Related Company Agreement made and entered into February 1, 1981 between Limco Investments, Inc. and The Limited Stores, Inc.
- D-75(c) Related Company Agreement Amendment # 1 made and entered into June 29, 1981 between Limco Investments, Inc. and The Limited Stores, Inc.
- D-75(d) Related Company Agreement Amendment # 2 made and entered into September 10, 1987 between Limco Investments, Inc. and The Limited Stores, Inc.
- D-75(e) Related Company Agreement Amendment #4 made and entered into May 1, 1989 between Limco Investments, Inc. and The Limited Stores, Inc.
- D-75(f) Related Company Agreement Amendment #5 made and entered into September 15, 1992 between Limco Investments, Inc. and The Limited Stores, Inc.
- D-75(g) Related Company Agreement Amendment #2 made and entered into May 1, 1989 between Lanco, Inc. and Lane Bryant, Inc.
- D-75(h) Related Company Agreement made and entered into February 2, 1986 between Lanco, Inc. and Lane Bryant, Inc.
- D-75(i) Related Company Agreement Amendment #1 made and entered into October 22, 1987 between Lanco, Inc. and Lane Bryant, Inc.
- D-75(j) Related Company Agreement Amendment #1 made and entered into May 1, 1989 between V. Secret, Inc. and Victoria's Secret Catalogue, Inc.
- D-75(k) Related Company Agreement Amendment # 2 made and entered into May 1, 1989 between Lernco, Inc. and Lerner Stores, Inc.
- D-76(a) Securities and Exchange Commission 10-K Reports for the Limited and subsidiaries dated February 2, 1991.
- D-76(b) Securities and Exchange Commission 10-K Reports for the Limited and subsidiaries dated February 2, 1992.
- D-76(c) Securities and Exchange Commission 10-K Reports for the Limited and subsidiaries dated January 30, 1993.

- D-76(d) Securities and Exchange Commission 10-K Reports for the Limited and subsidiaries dated January 29, 1994.
- D-77 North Carolina Administrative Rule 17 NCAC 5C.0102, "Doing Business Defined".
- D-78 Omitted.
- D-79 North Carolina Department of Revenue Redacted Final Decision Docket Number 90-33.
- D-80 Excerpt from "State Taxation -1997/1998 Cumulative Supplement" by Jerome R. Hellerstein and Walter Hellerstein.
- D-81(a) Colucci & Umans' legal fee billing statement for Limco Investments, Inc. dated December 31, 1992.
- D-81(b) Wilmington Trust Bank Statement for Limco Investments, Inc. dated April 2, 1993.
- D-81(c) Colucci & Umans' legal fee billing for Expressco, Inc. dated November 30, 1992.
- D-81(d) Wilmington Trust Bank Statement for Expressco, Inc. dated April 2, 1993.
- D-81(e) Colucci & Umans' legal fee billing for V. Secret Stores, Inc. dated December 31, 1992.
- D-81(f) Wilmington Trust Bank Statement for V. Secret Stores, Inc. dated April 2, 1993.
- D-81(g) Colucci & Umans' legal fee billing for Limco Investments, Inc. dated December 31, 1992.
- D-81(h) Wilmington Trust Bank Statement for Limco Investments, Inc. dated April 2, 1993.
- D-81(i) Colucci & Umans' legal fee billing for Limco Investments, Inc. dated September 30, 1992.
- D-81(j) Wilmington Trust Bank Statement for Limco Investments, Inc. dated February 26, 1993.
- D-81(k) Colucci & Umans' legal fee billing for Expressco, Inc. dated November 30, 1992.

- D-81(l) Wilmington Trust Bank Statement for Expressco, Inc. dated April 2, 1993.
- D-81(m) Colucci & Umans' legal fee billing for Expressco, Inc. dated December 31, 1992.
- D-81(n) Wilmington Trust Bank Statement for Expressco, Inc. dated May 28, 1993.
- D-82(a)(1) January 1992 Balance Sheet for A&F Trademark, Inc.
- D-82(a)(2) January 1992 Balance Sheet for Caciqueco, Inc.
- D-82(a)(3) January 1992 Balance Sheet for Expressco, Inc.
- D-82(a)(4) January 1992 Balance Sheet for Lanco Inc.
- D-82(a)(5) January 1992 Balance Sheet for Lernco, Inc.
- D-82(a)(6) January 1992 Balance Sheet for Limco Investments, Inc.
- D-82(a)(7) January 1992 Balance Sheet for Limtoo, Inc.
- D-82(a)(8) January 1992 Balance Sheet for Structureco, Inc.
- D-82(a)(9) January 1992 Balance Sheet for V. Secret Stores, Inc.
- D-82(b)(1) January 1993 Balance Sheet for A&F Trademark, Inc.
- D-82(b)(2) January 1993 Balance Sheet for Caciqueco, Inc.
- D-82(b)(3) January 1993 Balance Sheet for Expressco, Inc.
- D-82(b)(4) January 1993 Balance Sheet for, Lanco Inc.
- D-82(b)(5) January 1993 Balance Sheet for Lernco, Inc.
- D-82(b)(6) January 1993 Balance Sheet for Limco Investments, Inc.
- D-82(b)(7) January 1993 Balance Sheet for Limtoo, Inc.
- D-82(b)(8) January 1993 Balance Sheet for Structureco, Inc.
- D-82(b)(9) January 1993 Balance Sheet for V. Secret Stores, Inc.
- D-82(c)(1) January 1994 Balance Sheet for A&F Trademark, Inc.
- D-82(c)(2) January 1994 Balance Sheet for Caciqueco, Inc.

- D-82(c)(3) January 1994 Balance Sheet for Expressco, Inc.
- D-82(c)(4) January 1994 Balance Sheet for Lanco Inc.
- D-82(c)(5) January 1994 Balance Sheet for Lernco, Inc.
- D-82(c)(6) January 1994 Balance Sheet for Limco Investments, Inc.
- D-82(c)(7) January 1994 Balance Sheet for Limtoo, Inc.
- D-82(c)(8) January 1994 Balance Sheet for Structureco, Inc.
- D-82(c)(9) January 1994 Balance Sheet for V. Secret Stores, Inc.
- D-82(d)(1) January 1992 Statement of Income and Retained Earnings for A&F Trademark, Inc.
- D-82(d)(2) January 1992 Statement of Income and Retained Earnings for Caciqueco, Inc.
- D-82(d)(3) January 1992 Statement of Income and Retained Earnings for Expressco, Inc.
- D-82(d)(4) January 1992 Statement of Income and Retained Earnings for Lanco, Inc.
- D-82(d)(5) January 1992 Statement of Income and Retained Earnings for Lernco, Inc.
- D-82(d)(6) January 1992 Statement of Income and Retained Earnings for Limco Investments, Inc.
- D-82(d)(7) January 1992 Statement of Income and Retained Earnings for Limtoo, Inc.
- D-82(d)(8) January 1992 Statement of Income and Retained Earnings for Structureco, Inc.
- D-82(d)(9) January 1992 Statement of Income and Retained Earnings for V. Secret Stores, Inc.
- D-82(e)(1) January 1993 Statement of Income and Retained Earnings for A&F Trademark, Inc.
- D-82(e)(2) January 1993 Statement of Income and Retained Earnings for Caciqueco, Inc.

- D-82(e)(3) January 1993 Statement of Income and Retained Earnings for Expressco, Inc.
- D-82(e)(4) January 1993 Statement of Income and Retained Earnings for Lanco, Inc.
- D-82(e)(5) January 1993 Statement of Income and Retained Earnings for Lernco, Inc.
- D-82(e)(6) January 1993 Statement of Income and Retained Earnings for Limco Investments, Inc.
- D-82(e)(7) January 1993 Statement of Income and Retained Earnings for Limtoo, Inc.
- D-82(e)(8) January 1993 Statement of Income and Retained Earnings for Structureco, Inc.
- D-82(e)(9) January 1994 Statement of Income and Retained Earnings for V. Secret Stores, Inc.
- D-82(f)(1) January 1994 Statement of Income and Retained Earnings for A&F Trademark, Inc.
- D-82(f)(2) January 1994 Statement of Income and Retained Earnings for Caciqueco, Inc.
- D-82(f)(3) January 1994 Statement of Income and Retained Earnings for Expressco, Inc.
- D-82(f)(4) January 1994 Statement of Income and Retained Earnings for Lanco, Inc.
- D-82(f)(5) January 1994 Statement of Income and Retained Earnings for Lernco, Inc.
- D-82(f)(6) January 1994 Statement of Income and Retained Earnings for Limco Investments, Inc.
- D-82(f)(7) January 1994 Statement of Income and Retained Earnings for Limtoo, Inc.
- D-82(f)(8) January 1994 Statement of Income and Retained Earnings for Structureco, Inc.

- D-82(f)(9) January 1994 Statement of Income and Retained Earnings for V. Secret Stores, Inc.
- D-83(a)(1) January 30, 1992 pro-forma federal tax returns for A&F Trademark, Inc.
- D-83(a)(2) January 30, 1992 pro-forma federal tax returns for Caciqueco, Inc.
- D-83(a)(3) January 30, 1992 pro-forma federal tax returns for Expressco, Inc.
- D-83(a)(4) January 30, 1992 pro-forma federal tax returns for Lanco, Inc.
- D-83(a)(5) January 30, 1992 pro-forma federal tax returns for Lernco, Inc.
- D-83(a)(6) January 30, 1992 pro-forma federal tax returns for Limco Investments, Inc.
- D-83(a)(7) January 30, 1992 pro-forma federal tax returns for Limtoo, Inc.
- D-83(a)(8) January 30, 1992 pro-forma federal tax returns for Structureco, Inc.
- D-83(a)(9) January 30, 1992 pro-forma federal tax returns for V. Secret Stores, Inc.
- D-83(a)(10) January 30, 1992 pro-forma federal tax returns for Abercrombie & Fitch, Inc.
- D-83(a)(11) January 30, 1992 pro-forma federal tax returns for Cacique, Inc.
- D-83(a)(12) January 30, 1992 pro-forma federal tax returns for Express, Inc.
- D-83(a)(13) January 30, 1992 pro-forma federal tax returns for Lane Bryant, Inc.
- D-83(a)(14) January 30, 1992 pro-forma federal tax returns for Lerner New York, Inc.
- D-83(a)(15) January 30, 1992 pro-forma federal tax returns for Limited Stores, Inc.
- D-83(a)(16) January 30, 1992 pro-forma federal tax returns for Limited Too, Inc.
- D-83(a)(17) January 30, 1992 pro-forma federal tax returns for Structure, Inc.
- D-83(a)(18) January 30, 1992 pro-forma federal tax returns for Victoria's Secret Stores, Inc.
- D-83(a)(19) Federal Corporation Income Tax Return (Consolidated Federal 1120) for The Limited, Inc. and Subsidiaries, for tax year ended 1992.
- D-83(b)(1) January 30, 1993 pro-forma federal tax returns for A&F Trademark, Inc.

- D-83(b)(2) January 30, 1993 pro-forma federal tax returns for Caciqueco, Inc.
- D-83(b)(3) January 30, 1993 pro-forma federal tax returns for Expressco, Inc.
- D-83(b)(4) January 30, 1993 pro-forma federal tax returns for Lanco, Inc.
- D-83(b)(5) January 30, 1993 pro-forma federal tax returns for Lernco, Inc.
- D-83(b)(6) January 30, 1993 pro-forma federal tax returns for Limco Investments, Inc.
- D-83(b)(7) January 30, 1993 pro-forma federal tax returns for Limtoo, Inc.
- D-83(b)(8) January 30, 1993 pro-forma federal tax returns for Structureco, Inc.
- D-83(b)(9) January 30, 1993 pro-forma federal tax returns for V. Secret Stores, Inc.
- D-83(b)(10) January 30, 1993 pro-forma federal tax returns for Abercrombie & Fitch, Inc.
- D-83(b)(11) January 30, 1993 pro-forma federal tax returns for Cacique, Inc.
- D-83(b)(12) January 30, 1993 pro-forma federal tax returns for Express, Inc.
- D-83(b)(13) January 30, 1993 pro-forma federal tax returns for Lane Bryant, Inc.
- D-83(b)(14) January 30, 1993 pro-forma federal tax returns for Lerner New York, Inc.
- D-83(b)(15) January 30, 1993 pro-forma federal tax returns for Limited Stores, Inc.
- D-83(b)(16) January 30, 1993 pro-forma federal tax returns for Limited Too, Inc.
- D-83(b)(17) January 30, 1993 pro-forma federal tax returns for Structure, Inc.
- D-83(b)(18) January 30, 1993 pro-forma federal tax returns for Victoria's Secret Stores, Inc.
- D-83(b)(19) Federal Corporation Income Tax Return (Consolidated Federal 1120) for The Limited, Inc. and Subsidiaries, 31-1029810, for tax year ended 1993.
- D-83(c)(1) January 30, 1994 pro-forma federal tax returns for A&F Trademark, Inc.
- D-83(c)(2) January 30, 1994 pro-forma federal tax returns for Caciqueco, Inc.
- D-83(c)(3) January 30, 1994 pro-forma federal tax returns for Expressco, Inc.

- D-83(c)(4) January 30, 1994 pro-forma federal tax returns for Lanco, Inc.
- D-83(c)(5) January 30, 1994 pro-forma federal tax returns for Lernco, Inc.
- D-83(c)(6) January 30, 1994 pro-forma federal tax returns for Limco Investments, Inc.
- D-83(c)(7) January 30, 1994 pro-forma federal tax returns for Limtoo, Inc.
- D-83(c)(8) January 30, 1994 pro-forma federal tax returns for Structureco, Inc.
- D-83(c)(9) January 30, 1994 pro-forma federal tax returns for V. Secret Stores, Inc.
- D-83(c)(10) January 30, 1994 pro-forma federal tax returns for Abercrombie & Fitch, Inc.
- D-83(c)(11) January 30, 1994 pro-forma federal tax returns for Cacique, Inc.
- D-83(c)(12) January 30, 1994 pro-forma federal tax returns for Express, Inc.
- D-83(c)(13) January 30, 1994 pro-forma federal tax returns for Lane Bryant, Inc.
- D-83(c)(14) January 30, 1994 pro-forma federal tax returns for Lerner New York, Inc.
- D-83(c)(15) January 30, 1994 pro-forma federal tax returns for Limited Stores, Inc.
- D-83(c)(16) January 30, 1994 pro-forma federal tax returns for Limited Too, Inc.
- D-83(c)(17) January 30, 1994 pro-forma federal tax returns for Structure, Inc.
- D-83(c)(18) January 30, 1994 pro-forma federal tax returns for Victoria's Secret Stores, Inc.
- D-83(c)(19) Federal Corporation Income Tax Return (Consolidated Federal 1120) for The Limited, Inc. and Subsidiaries, 31-1029810, for tax year ended 1994.
- D-84(a) 1991 Annual Report for The Limited, Inc.
- D-84(b) 1992 Annual Report for The Limited, Inc.
- D-84(c) 1993 Annual Report for The Limited, Inc.

- D-85 Transcript of Administrative Tax Hearing held June 9, 1998 through June 12, 1998 regarding the proposed assessments against: A&F Trademark, Inc., Caciqueco, Inc., Expressco, Inc., Lanco, Inc., Lernco, Inc., Limco Investments, Inc., Limtoo, Inc., Structureco, Inc., and V. Secret Stores, Inc.
- D-86 Department's "Exhibit List" dated August 31, 1998.
- D-87 Department's Initial Post-Hearing Brief dated March 1, 1999.
- D-88 Department's Post-Hearing Response Brief dated May 3, 1999.
- D-89 Departmental responses to Hearing Officer questions concerning Administrative Tax Hearing of The Limited Companies dated February 29, 2000.

Documents submitted by the Taxpayers:

- TP-1 Booklet "Why Corporations Choose Delaware" by Lewis S. Black Jr.
- TP-2 "Portfolio Print-Outs" for Expressco, Inc., Lernco, Inc., and Limco, Inc. dated May 18, 1998.
- TP-3 Copies of various patent infringement litigation concerning A&F Trademark, Inc., Lanco, Inc., Limco Investments, Inc., and Expressco, Inc.
- TP-4 Report entitled "North Carolina Corporate Income Tax Apportionment of Business Income" prepared by Richard W. Genetelli dated June 5, 1998.
- TP-5 Report entitled "Nexus and State Corporate Income Taxation" prepared by David E. Wildasin dated June 1998.
- TP-6 Report entitled "Economic Analysis of North Carolina Administrative Rule .0102" prepared by David L. Baumer.
- TP-7 Report entitled "Testing a Related-Party Royalty for Adherence to the Arm's-Length Standard" prepared by Irving H. Plotkin dated June 1998.
- TP-8 Report entitled "Royalty Rate Study – Licensing in the Consumer Goods Industry" prepared by Trademark & Licensing Associates, Inc. dated June 1998.
- TP-9 Report entitled "Expert Opinion of Professor Richard D. Pomp."
- TP-10 Excerpt from June 8, 1998 Tax Analysts, State Tax Today.

- TP-11 Letter from M. Larry Stanfield, CPA, of the North Carolina Department of Revenue Interstate Audit Division to Cheri Rettstatt dated October 23, 1995.
- TP-12 Letter from Hollis L. Hyans to Kay Miller Hobart, dated March 26, 1998.
- TP-13 Letter from Jasper L. Cummings Jr. to Jack L. Harper dated June 4, 1998.
- TP-14 Letter from Hollis L. Hyans to Hearing Officer Michael A. Hannah dated October 30, 1998.
- TP-15 Letter from Hearing Officer Michael A. Hannah to Hollis L. Hyans dated December 16, 1998.
- TP-16 Letter from Paul H. Frankel to Jack L. Harper dated December 30, 1998.
- TP-17 Letter from Hollis L. Hyans to Hearing Officer Michael A. Hannah dated February 8, 1999.
- TP-18 Chart regarding the physical presence and activities of Petitioners by location.
- TP-19 Response by Professor David E. Wildasin to questions of the North Carolina Department of Revenue dated December 23, 1998.
- TP-20 Petitioners' Initial Post-Hearing Brief dated March 1, 1999.
- TP-21 Petitioners' Post-Hearing Answer Brief dated April 30, 1999.
- TP-22 Petitioners' Sur-reply Brief dated June 28, 1999.
- TP-23 Petitioners' responses to the Limited Hearing Questions dated February 29, 2000.
- TP-24 Letter to Mr. Michael A. Hannah from Hollis Hyans dated April 12, 2000.