

## DEPARTMENT OF STATE REVENUE

02-20160475R.ODR

02-20160476R.ODR

02-20160496R.ODR

**Final Order Denying Refund: 02-20160475R; 02-20160476R; 02-20160496R**  
**Corporate Income Tax**  
**For the Years 2012, 2013, and 2014**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

### HOLDING

The Department held that Indiana Companies provided a service when they galvanized customer-owned metal products and that the income earned from out-of-state customers was properly sourced to the Indiana locations where those services were performed.

### ISSUE

#### I. Corporate Income Tax - Apportionment.

**Authority:** IC § 6-2.5-1-27; IC § 6-3-2-2(f); [45 IAC 3.1-1-55](#).

Taxpayers argue that they are entitled to a refund of corporate income tax on the ground that many of Taxpayers' customers are located outside Indiana.

### STATEMENT OF FACTS

Taxpayers are three separate but commonly owned companies each of which is located in Indiana. According to Taxpayers' representatives, Taxpayers manufacture electrical equipment and provide "hot-dip galvanizing services."

Taxpayers originally filed their Indiana corporate income tax returns reporting to Indiana their income from customers within Indiana and from customers outside Indiana; as explained in the audit report, "Taxpayer [formerly] took the position that all income was Indiana sourced income without apportionment." Taxpayers subsequently filed amended 2012, 2013, and 2014 income tax returns in which they apportioned their income based on the addresses of their customers. In those amended returns, Taxpayers requested income tax refunds.

The Indiana Department of Revenue ("Department") reviewed the returns and denied the refunds. Taxpayers disagreed with the results and submitted protests to that effect. An administrative hearing was conducted during which Taxpayers' representative explained the basis for the protest. This Final Order Denying refund results.

#### I. Corporate Income Tax - Apportionment.

### DISCUSSION

The issue is whether Taxpayers are in the business of providing a service to their customers or are in the business of selling tangible personal property to their customers. According to Taxpayers, they are selling tangible personal property and the income should be apportioned to the various states in which the customers reside. If Taxpayers' are earning money by providing services at their Indiana locations, then those services receipts are in the numerator of Indiana's single factor apportionment.

Along with its manufacturing activities, Taxpayers are in the galvanizing business. Customers from outside Indiana and inside Indiana send various metals and metal products to Taxpayers' locations. While there, the metals are "galvanized" by applying a coating of zinc metal. Taxpayers explain the process as follows.

Customers of the taxpayer send metal materials to the taxpayers' Indiana facility. These materials are sent by the customers for purposes of having a protective coating of zinc overlay added to them. When the zinc overlay is applied to the metal it transforms the outer layer into zinc alloy which . . . prevents the metal from

being damaged or experiencing degradation over an extended period of time.

Taxpayers are - of course - paid for galvanizing the customers' metals. Taxpayers argue that they are in the business of selling zinc used in the galvanizing process. Because some of that zinc is sold to Indiana customers and some is sold to out-of-state customers, Taxpayers argue that they are entitled to "source" income from their out-of-state customers to the states in which those customers are located. According to Taxpayer, income from out-of-state customers is sourced to the out-of-state location.

Taxpayers claim that, under Indiana law, zinc is "tangible personal property" because the zinc is "personal property that can be seen weighed, measured, felt or touched . . ." IC § 6-2.5-1-27. Taxpayers state that zinc "clearly meets this definition" because zinc "is an obvious man-made material that can be seen weighed, measured, felt, touched, and is perceptible to the senses."

Taxpayers state that they only recently realized that they are taxable in states other than Indiana in which their customers are located. Taxpayers believe that they are taxable in the states in which the zinc is sold and that - as a result - the income from the out-of-state galvanizing customers should be "sourced" to those out-of-state locations.

The Department issued written audit reports denying the refunds on the ground that Taxpayers' were providing their customers a service. The reports cited to IC § 6-3-2-2(f) which provides:

Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

- (1) the income-producing activity is performed in this state; or
- (2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

The audit's stance was that Taxpayers were "providing galvanizing services in a process where it acquire[d] zinc that [it] then heated and applied to its customers' materials." Referencing IC § 6-3-2-2(f), the audit stated that Taxpayers' "income producing activity" occurred within Indiana and that "100[percent] of the income should be sourced to Indiana under IC § 6-3-2-2(f)." To that end, the audit cited to [45 IAC 3.1-1-55](#) which defines "income producing activity" as "the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit" and "the place where personal services are rendered."

The Department also cited to Taxpayers' 10K report in which the report described Taxpayers' galvanizing business. "[Taxpayers'] Galvanizing Services Segment provides hot dip galvanizing services to the steel fabrication industry located throughout" the United States and foreign companies. "Hot dip galvanizing is a metallurgical process by which molten zinc is applied to a customer's material."

The Department is unable to agree that Taxpayers are in the business of selling zinc to out-of-state customers. Although Taxpayers hold substantial amounts of zinc in their inventory of goods and materials, Taxpayers' income producing activity constitutes a "service" performed on behalf of their customers. That activity consists of: (1) receiving customer-owned metal products; (2) cleaning the customer-owned metal products with pickling acid; (3) dipping the customer-owned metal products into containers filled with molten zinc; and (4) returning the finished product back to the customer.

Taxpayers' income producing activities occur within Indiana. The money Taxpayers earn is directly related to the services they perform on behalf of the customers. The fact that Taxpayers consume zinc in the provision of that service is irrelevant in determining the nature of the underlying transactions and is irrelevant in deciding where Taxpayers' income should be sourced. Taxpayers' customers are not interested in purchasing zinc, and Taxpayers' do not hold themselves out as the purveyors of zinc metal. Under IC § 6-3-2-2(f), the service income is properly sourced to the location where the galvanizing services are provided; in this case, that location is within Indiana.

## FINDING

Taxpayers' protest is respectfully denied.

*Posted: 05/31/2017 by Legislative Services Agency*

