

**Memorandum of Decision: 02-20170393R**  
**Corporate Income Tax**  
**For the Year 2010**

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**HOLDING**

Information Technology Company, which qualified as an Indiana Military Based Enhancement Area taxpayer, was entitled to calculate its 2010 corporate income tax liability using the general, weighted apportionment factors and not the equally weighted three-factor formula.

**ISSUE**

**I. Corporate Income Tax - Weighted Apportionment Factors.**

**Authority:** IC § 6-3-2-1.5(b); IC § 6-3-2-2(b); IC § 6-3-2-2(b)(4).

Taxpayer argues it is entitled to an additional refund of corporate income tax because the Department miscalculated the apportionment factors used to determine Taxpayer's corporate income tax liability.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state company in the business of providing information technology. Taxpayer provides its services at various Indiana locations. Taxpayer files for and pays Indiana corporate income tax.

Taxpayer filed 2010 and 2011 amended Indiana corporate income tax returns seeking tax refunds for both years. The Indiana Department of Revenue ("Department") reviewed the returns. The Department granted in full the 2011 refund. The Department denied in part and granted in part the 2010 refund.

Taxpayer disagreed with that portion of the Department's decision denying the 2010 refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Memorandum of Decision results.

**I. Corporate Income Tax - Weighted Apportionment Factors.**

**DISCUSSION**

Taxpayer argues that the Department misapplied the apportionment factors used in determining its 2010 corporate income tax liability and that this error reduced the amount of tax refund to which it was otherwise entitled.

The Department's "Explanation of Adjustments" explains the refund calculation:

[Taxpayer's] amended returns applied the alternate tax rate calculation as an Indiana Military Based Enhancement Area (MBEA) taxpayer. Taxable income derived from a designated Indiana MBEA is subject to a reduced tax at the rate of five (5) percent. See IC § 6-3-2-1.5(b).

...

Upon review, the Taxpayer was able to demonstrate expansion into the MBEA. In addition, the Taxpayer was able to provide documents supporting property, payroll and sales from within the MBEA for fiscal year ending 1/31/2012. They also provided documentation of the sales from locations within the MBEA for fiscal year ending 1/31/2012. [Taxpayer] has demonstrated that they qualify as an MBEA taxpayer under [IC 6-3-2-1.5](#) and is entitled to the alternative tax rate calculation.

However, the Department concluded that Taxpayer had miscalculated the apportionment factors used to determine its 2010 tax liability.

[T]he Taxpayer determined the portion of income subject to the alternative rate using a single factor (sales). The [T]axpayer should have used the 2010 Schedule M to properly determine the income subject to the lower rate. For 2010 Schedule M, the calculation used the average property, payroll and sales within and without the MBEA to determine the portion of the income subject to the lower rate. When the claim for refund was calculated using the "Last Determined" (per prior audit) figures and the three factors, the amount to be refunded was reduced . . . .

Taxpayer argues that the 2010 Schedule M equally weighted three-factor apportionment was erroneous. Taxpayer explains that the "sole issue . . . is whether the Department erred in apportioning adjusted gross income for MBEA purposes using an apportionment factor weighting that differed from the apportionment factor weighting under the standard provisions for apportioning adjusted gross income." Taxpayer points out that the Department's 2011 Schedule M form was updated to comport with the weighted apportionment factors found at IC § 6-3-2-2(b)(4) and argues that the failure to update the 2010 Schedule M form "appears to have been a matter of administrative oversight."

Taxpayer argues:

In the absence of specific guidance to the contrary, there is nothing to support applying the language "derived from sources within" for MBEA apportionment purposes in a manner that differs from the application of the same language for general apportionment purposes. The general apportionment provisions applicable to Taxpayer's fiscal year ending January 31, 2011 provide for use [of] an enhanced (18 times) sales factor weighting in determining adjusted gross income "derived from sources within Indiana . . . ."

Taxpayer relies on the "derived from" language found at IC § 6-3-2-2(b) which provides:

[I]f business income of a corporation or a nonresident person is *derived from sources within* the state of Indiana and from sources without the state of Indiana, the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by the following:

. . .

For all taxable years beginning after December 31, 2009, and before January 1, 2011, a fraction, the numerator of the fraction is the property factor plus the payroll factor plus the product of the sales factor *multiplied by eighteen* (18); and the denominator of the fraction is twenty (20). (*Emphasis added*).

Despite whatever erroneous 2010 Schedule M instructions may have provided, the Department finds Taxpayer's argument persuasive especially in view of the fact that the 2011 Schedule M instructions were updated to comport with the general weighted factors found at IC § 6-3-2-2(b)(4).

The IC § 6-3-2-1.5(b), MBEA calculation is subject to Indiana's general weighted factors found at IC § 6-3-2-2(b)(4) and not on the superseded, equally weighted three-factor apportionment provisions.

## FINDING

Taxpayer's protest is sustained.

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