

Final Order Denying Refund: 02-20231802
Corporate Income Tax
For the Year 2018

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

Indiana Company was not entitled to additional refund of income tax because (1) it failed to request in writing to obtain a ruling which permits the use of its proposed alternative method to reflect its income from Indiana sources, and (2) it failed to substantiate that (i) its original tax filing under the standard apportionment method, as statutorily required, resulted in a material distortion and (ii) its proposed alternative apportionment method fairly reflected its business activities in Indiana.

ISSUE

I. Corporate Income Tax - Refund.

Authority: [IC 6-3-1-20](#); [IC 6-3-2-1](#); [IC 6-3-2-2](#); [IC 6-8.1-5-1](#); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *May Dep't Store v. Indiana Dep't of State Revenue*, 749 N.E.2d 651 (Ind. Tax Ct. 2001); [45 IAC 3.1-1-29](#); [45 IAC 3.1-1-30](#); [45 IAC 3.1-1-37](#); [45 IAC 3.1-1-39](#); [45 IAC 3.1-1-50](#); [45 IAC 3.1-1-51](#); [45 IAC 3.1-1-52](#); [45 IAC 3.1-1-62](#); Indiana Department of Revenue, *Guide For Requesting a Policy Determination*.

Company argued that it was entitled to additional refund under its proposed alternative apportionment method because the standard apportionment method resulted in a material distortion of its income attributable to Indiana sources.

STATEMENT OF FACTS

Taxpayer is a corporation domiciled in Indiana. Taxpayer operates manufacturing facilities in Indiana and other states. Taxpayer and its subsidiaries are in the business of manufacturing tangible property sold to customers within and without Indiana. Each year, Taxpayer files an Indiana Corporate Adjusted Gross Income Tax Return (Form IT-20) to report its income, business or otherwise, attributable to Indiana subject to Indiana state and local income tax.

In 2018, Taxpayer sold one of its divisions located in Indiana ("Indiana Division") - as an asset sale - to a third party. Taxpayer reported an approximately \$30 million capital gain net income on the 2018 federal income tax return (Form 1120). Taxpayer apportioned that income among states, including Indiana, where it conducted its business and remitted its state income tax.

In October 2022, Taxpayer amended its 2018 return based on several reasons to request an approximately \$1 million refund of income tax. Among those reasons, Taxpayer stated that its "amended return is intended to serve as a petition for alternative apportionment[.]"

In February 2023, the Indiana Department of Revenue ("Department") granted a partial refund in the amount of approximately \$10,000. Taxpayer protested the partial refund denial. A phone hearing was held. This final determination ensues.

I. Corporate Income Tax - Refund.

DISCUSSION

Taxpayer amended its original 2018 Indiana corporate income tax return, requesting a refund of approximately \$1 million. Upon review, the Department granted a partial refund and denied the remainder. Taxpayer disagreed and

argued that it was entitled to an additional refund. The issue thus is whether Taxpayer provided sufficient documentation to substantiate its claim that it was entitled to an additional refund.

A. The Law

Pursuant to Indiana jurisprudence, "each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010).

Indiana imposes a tax on "the adjusted gross income derived from sources within Indiana of every corporation[.]" [IC 6-3-2-1\(b\)\(2018\)](#). [IC 6-3-2-2\(a\)\(2018\)](#) outlines "the adjusted gross income derived from sources within Indiana," in relevant part:

With regard to corporations[.], "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

...

In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. .

..

When business income of a corporation "is derived from sources within the state of Indiana and from sources without the state of Indiana, the business income derived from sources within the state of Indiana . . . **shall be determined by multiplying** the business income derived from sources both within and without the state of Indiana . . . **by the sales factor.**" [IC 6-3-2-2\(b\)\(5\) \(2018\)](#)(**emphasis added**). See also [45 IAC 3.1-1-37](#).

"Business income" includes "all income that is apportionable to the state under the Constitution of the United States." [IC 6-3-1-20](#) (2018). [45 IAC 3.1-1-29](#) further explains, in relevant part:

"Business Income" is defined in the Act as income from transactions and activity in the regular course of the taxpayer's trade or business, including income from tangible and intangible property **if the acquisition, management, or disposition of the property are integral parts of the taxpayer's regular trade or business.**

Nonbusiness income means all income other than business income.

The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, non-operating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. **Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activity which are the elements of a particular trade or business.**

(**Emphasis added**); see also [45 IAC 3.1-1-30](#); *May Dep't Store v. Indiana Dep't of State Revenue*, 749 N.E.2d 651, 661-63 (Ind. Tax Ct. 2001) (establishing two tests - a transactional test and a functional test - to determine whether income is considered "business income").

[IC 6-3-2-2](#)(e) (2018) further provides, in relevant part:

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. . . . Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Regardless of the f.o.b. point or other conditions of the sale, sales of tangible personal property are in this state if:

- (1) the property is delivered or shipped to a purchaser that is within Indiana, other than the United States government; or
- (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and the purchaser is the United States government.

(Emphasis added).

"Sales" means **"all gross receipts of the taxpayer which are not subject to allocation as nonbusiness income."** [45 IAC 3.1-1-50](#) **(emphasis added)**. "The denominator of the sales factor includes **all gross receipts from the taxpayer's sales[.]**" [45 IAC 3.1-1-51](#) **(emphasis added)**. "The numerator of the sales factor generally includes **gross receipts from sales attributable to this state**, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness[.]" [45 IAC 3.1-1-52](#) **(emphasis added)**.

Accordingly, when a taxpayer sells its property that has been used to generate business income, the disposition of that property is an integral part of the taxpayer's regular trade or business. As such, the gross receipts from disposition of that property are deemed business income subject to apportionment. When disposition of the property occurs in Indiana, the gross receipts from that sale are attributable to Indiana. As such, the gross receipts from that sale are required to be included in both numerator and denominator to compute the Indiana sales factor in order to apportion the taxpayer's business income subject to Indiana income tax.

In certain special circumstances, as an exception to the standard rule, [IC 6-3-2-2](#)(f)(2018) allows "the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income," in part:

If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, **the taxpayer may petition for []** in respect to all or any part of the taxpayer's business activity, **if reasonable**:

...

- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Notwithstanding [IC 6-8.1-5-1](#)(c), **a taxpayer petitioning for [] the use of an alternative method to effectuate an equitable allocation and apportionment of the taxpayer's income under this subsection bears the burden of proof that the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources.**

(Emphasis added).

That is, when a taxpayer petitions for the use of an alternative method to effectuate an equitable apportionment of the taxpayer's income, the taxpayer must demonstrate that (1) the standard formula fails to fairly reflect taxpayer's business activity in Indiana and (2) its proposed alternative formula is reasonable. The taxpayer "must request in writing" to obtain "a ruling which permits [] the use of a different formula which more fairly reflects its income from Indiana sources." [45 IAC 3.1-1-39](#); [45 IAC 3.1-1-62](#); see also Indiana Department of Revenue, *Guide For Requesting a Policy Determination*, available at <https://www.in.gov/dor/legal-resources/requesting-policy-guidance/> (last visited January 18, 2024). "[T]he Department will **depart** from use of the standard formula **only if the use of such formula works a hardship or injustice upon the taxpayer, results in an arbitrary division of income, or in other respects does not fairly attribute income to this state or other states.**" [45 IAC 3.1-1-62](#) **(emphasis added)**.

B. Taxpayer's Tax Filings and Protest

In 2018, Taxpayer sold its Indiana Division located in Indiana and had a \$30 million net gain. Taxpayer determined that the \$30 million gain did not qualify as nonbusiness income and was not fully allocable to Indiana. Taxpayer concluded that the \$30 million gain was business income attributable to Indiana source subject to apportionment rule. Taxpayer thus included the \$30 million gross receipts in the numerator and the denominator to arrive at the Indiana sales factor for apportionment purposes. Taxpayer's original 2018 Indiana corporate income tax return reported its Indiana sales factor of 54.96 percent.

In late 2022, to claim the approximately \$1 million refund, Taxpayer amended its 2018 return, stating, in part, the following:

During the 2018 tax year, the taxpayer sold a division of its business. This sale was a one-time exceptional transaction that significantly distorted the taxpayer's apportionment. Including the gross receipts from the sale of this division in the sales factor did not fairly represent the taxpayer's income derived from sources within Indiana. Therefore[,] on this return, [approximately \$30 million] in gross receipts from this transaction have [] been removed from the numerator and denominator.

Referencing [IC 6-3-2-2\(l\)\(4\)](#) and [45 IAC 3.1-1-50](#), Taxpayer asserted that its "gross receipts should be disregarded in determining the sales factor to effectuate an equitable apportionment." Taxpayer's amended return excluded the \$30 million gain from numerator and denominator to arrive at its proposed 2.30 percent sales factor and its \$1 million refund request.

C. The Department's Review

The Department reviewed Taxpayer's amended return. Based on the review, the Department granted a \$10,000 refund and denied the remainder of Taxpayer's refund request. The report noted, in relevant part, the following:

[Taxpayer] proposed an alternative apportionment method where the receipts from the sale of the assets of their [Indiana Division] were excluded from the calculation of [Taxpayer's] Indiana apportionment percentage. This change in the apportionment calculation [] resulted in [Taxpayer's] Indiana apportionment percentage for 2018 being reduced from 54.96[percent] Indiana on the original income tax return to 2.30[percent] Indiana on the amended income tax return. **[Taxpayer's] amended return did not propose allocation or apportionment of any of the income realized from the sale of the [Indiana Division] to Indiana or anywhere. . . .**

The assets of [Taxpayer's Indiana Division] were located in [] Indiana. The sale of those assets to the new owner took place in Indiana. The receipts from the sale of the assets of [Taxpayer's Indiana Division] are attributable to Indiana in accordance with [45 IAC 3.1-1-52](#).

The [\$30 million] in receipts from the sale of the assets of [Taxpayer's Indiana Division] was greater than [Taxpayer's] total sales for 2018. A large amount of receipts attributable to Indiana would result in a correspondingly higher Indiana apportionment percentage. The fact that [Taxpayer's] Indiana apportionment percentage for 2018 was higher due to these large Indiana receipts does not mean there was distortion.

The proportionally higher Indiana percentage resulting from the sale of Indiana assets is a natural result of the additional Indiana receipts. . . .

The income apportioned to Indiana using the standard method of apportionment did not overstate [Taxpayer's] income derived from sources within Indiana as [Taxpayer] claimed. . . .

(Emphasis added).

The Department's review found that "[t]here is no justification for the change in apportionment methodology[.]"

D. Analysis and Conclusion

Pursuant to [IC 6-3-2-2](#), for Indiana corporate income tax purposes, a corporation - such as Taxpayer in this instance - doing business both within and without Indiana, is required to apportion its business income based on the sales factor and to allocate its nonbusiness income attributable to Indiana sources.

Taxpayer relied on [IC 6-3-2-2\(f\)\(4\)](#) in its amended return and applied its proposed alternative method to claim the \$1 million refund. Taxpayer stated that the gross receipts from the sale of its Indiana Division in 2018 were business income but that the inclusion of the gross proceeds related to the sale of Indiana Division "resulted in significantly overstated business income derived from Indiana sources." Taxpayer contended that the \$30 million "gross receipts should be disregarded in determining the sales factor to effectuate an equitable apportionment" under [IC 6-3-2-2\(f\)\(4\)](#). Ignoring the facts that the Indiana Division is located in Indiana and the asset sale took place in Indiana, Taxpayer excluded the \$30 million gross receipts from the sales factor, in both the numerator and the denominator. By doing so, Taxpayer reduced its Indiana sales factor from 54.96 percent down to 2.30 percent to support its \$1 million refund.

Upon review, Taxpayer's reliance of [IC 6-3-2-2\(f\)\(4\)](#) is misplaced. First, as mentioned above, [IC 6-3-2-2\(f\)](#) is an exception to the standard allocation and apportionment rules. As such, before deviating from the applicable standard apportionment method, Taxpayer was required to "request in writing" to obtain "a ruling which permits [] the use of a different formula which more fairly reflects its income from Indiana sources." To that end, Taxpayer must submit its written request to the Department's Policy Division prior to filing its return. Taxpayer failed to do so.

Second, Taxpayer sought to deviate from the standard method. As such, it bears the burden of proof to show that "the allocation and apportionment provisions of [\[IC 6-3\]](#) do not fairly represent [its] income derived from sources." *Id.* In particular, Taxpayer was required to demonstrate that (i) the standard apportionment method fails to reflect Taxpayer's business activity in Indiana and (ii) its alternative apportionment method is reasonable. Taxpayer failed to do so.

Specifically, Taxpayer erred in simply asserting that its sale of Indiana Division was a one-time event and excluding the \$30 million from the numerator and the denominator without providing supporting documents to substantiate its claim of distortion. Taxpayer further ignored the facts that the Indiana Division, as Taxpayer's manufacturing facility, is located in Indiana and the sale of those assets to the new owner took place in Indiana. In addition to its failure to obtain the approval of a ruling in writing, Taxpayer failed to demonstrate that (i) the standard method fails to reflect Taxpayer's business activity in Indiana and (ii) its proposed alternative method is reasonable. Taxpayer's proposal to simply exclude the \$30 million from sales factor is not reasonable because it failed to substantiate the standard method "works a hardship or injustice upon the taxpayer, results in an arbitrary division of income, or in other respects does not fairly attribute income to this state or other states." As explained in [45 IAC 3.1-1-62](#), the "Department will depart from use of the standard formula only if the use of such formula works a hardship or injustice upon the taxpayer, results in an arbitrary division of income, or in other respects does not fairly attribute income to this state or other states."

To conclude, Taxpayer was not entitled to an additional refund based on its proposed alternative apportionment method. Taxpayer failed to request in writing a ruling to permit the use of its proposed method. Taxpayer also failed to meet its burden of proof, as statutorily required under [IC 6-3-2-2\(f\)](#).

FINDING

Taxpayer's protest of the Department's refund denial is respectfully denied.

January 19, 2024

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An [html](#) version of this document.