

Multistate Taxation

By Philip M. Tatarowicz

Developments in Multistate Taxation

Alaska

The Alaska Supreme Court held that a petroleum corporation and its subsidiaries were a unitary business subject to formula apportionment.¹ The court determined that the facts found by the administrative law judge demonstrated functional integration, centralization of management and economies of scale, and that the corporation had not carried its burden of proving the non-unitary nature of its business. The court also determined that the corporation lacked standing to challenge the internal consistency of Alaska's apportionment scheme because it did not identify an actual injury it had suffered as a result of the alleged constitutional infirmity. In addition, the court held that the Department's alternative apportionment formula, composed of property, sales and extraction factors, was reasonable as applied to the corporation.

Illinois

The Illinois Supreme Court struck down a statute imposing use tax collection obligations on out-of-state retailers that contract with in-state residents to refer potential customers, for a commission, to retailers' websites with Internet links.² The court determined that the statute imposed a discriminatory tax on electronic commerce in violation of the Internet Tax Freedom Act. The court reasoned that, under the statute, performance marketing over the Internet provided a basis for imposing a use tax collection obligation on an out-of-state retailer, but that performance marketing by an out-of-state retailer appearing in print or on over-the-air broadcasting in Illinois did not trigger an Illinois use tax collection obligation.

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Indiana

The Indiana Department of Revenue ruled that it had erred when it departed from the standard method of apportioning income and required a multi-state business and two associated entities to report their income using a separate accounting method.³ The Department had the responsibility of establishing that the preferred apportionment method did not fairly reflect the business's Indiana source income, and the Department failed to demonstrate that it was necessary to depart from the standard apportionment formula. The Department also ruled that it was not justified in requiring the business and an associated entity to add back royalty expenses paid to a related, out-of-state entity for the use of its intellectual property. The Department found that the business had demonstrated that the royalty payments did not significantly change either company's financial results, that the royalty payments were commensurate with the value of the intellectual property, that the payments to and from the related out-of-state entity did not constitute an abusive intercompany circular flow of money that had no commercial business purpose and that the money earned from licensing the intellectual property was legitimately administered pursuant to a centralized cash management process.

New Jersey

The Tax Court of New Jersey found in a precedential decision that an out-of-state corporation that was a

limited partner in a New Jersey limited partnership had nexus with the State and was subject to New Jersey Corporation Business Tax.⁴ The court found that the limited partner's interactions with the partnership and with the partnership's general partner, a New Jersey corporation, were sufficient to establish "presence based nexus" with the State. The court reasoned that the entities were not separate and independent entities because they were in the same line of business; were parties to the same New Jersey governed cash management agreement; had common agents, managers, officers and directors upon whom they were operationally dependent; and shared a principal place of business in New Jersey.

Washington, D.C.

On October 17, 2013, legislation was signed into law repealing the Multistate Tax Compact ("Compact") from the District of Columbia Official Code.⁵ The legislation also reenacted the Compact with certain provisions intentionally omitted. The reenacted version of the Compact excludes Articles III and IV.

ENDNOTES

- 1 *Tesoro Corp. v. Alaska Dep't of Rev.*, No. S-14326 (Ak., Oct. 25, 2013).
- 2 *Performance Marketing Ass'n v. Hamer*, No. 114496 (Ill., Oct. 18, 2013).
- 3 Letter of Findings, No. 02-20130215 (Ind. Dep't of Rev., Oct. 30, 2013).
- 4 *Village Super Market of PA, Inc. v. Dir., Div. of Tax'n*, No. 021002-2010 (N.J. Tax Ct., Oct. 23, 2013).
- 5 Bill B20-0496 (D.C.).



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