

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL
STATE OF ILLINOIS**

CBIZ WEST INC.,

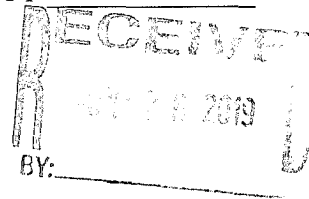
Petitioner,

v.

ILLINOIS DEPARTMENT OF REVENUE,

Respondent.

No. 19 TT



PETITION

NOW COMES the petitioner, CBIZ West Inc. ("Petitioner") (Taxpayer ID 20-2101981), by and through its attorney, Reed Smith LLP, and brings this petition (this "Petition") against the respondent, the Illinois Department of Revenue (the "Department"), pursuant to the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 *et seq.*), in protest of the Department's March 4, 2019 Notices of Deficiency, stating as follows:

INTRODUCTION

1. This Petition arises out of the Department's audit (Audit ID: A1322352640) and issuance of two Notices of Deficiency (the "Notices") for Corporation Income and Replacement Tax dated March 4, 2019, the first by letter ID CNXXX18692527848 in the amount of \$12,964.92 for the tax year ending December 31, 2012, and the second by letter ID CNXXX1X639464162 in the amount of \$473,562.41 for the tax year ending December 31, 2013. The Notices concern, in part, issues of (1) whether Petitioner and its subsidiary were engaged in a unitary business, and (2) whether the gain ("the Gain") realized from the sale of the subsidiary constitutes apportionable business income. The tax years ending December 31, 2012

and December 31, 2013 are hereinafter collectively referred to herein as the (“Tax Years”). Copies of the Department’s Notices are attached as Exhibit A.

PARTIES

2. Petitioner was incorporated in Delaware and has its principal place of business located at 6050 Oak Tree Boulevard, Cleveland Ohio 44131. The telephone number for Petitioner is (864) 241-2009.

3. The Department is an agency of the Executive Branch of the State of Illinois government and is charged with administering and enforcing many of the revenue laws of the State of Illinois, including the Illinois Income Tax Act (“IITA”), 35 ILCS 5/201 *et seq.*

4. Petitioner is represented by David P. Dorner of Reed Smith LLP, located at 10 S. Wacker Drive, 40th Floor, Chicago, Illinois 60606, who can be reached at (312) 207-2402 or ddorner@reedsmith.com. Petitioner is also represented by Paul G. Bogdanski of Reed Smith LLP, located at 10 S. Wacker Drive, 40th Floor, Chicago, Illinois 60606, who can be reached at (312) 207-3923 or pbogdanski@reedsmith.com.

JURISDICTION

5. This Tax Tribunal has jurisdiction pursuant to 35 ILCS 1010/1-45(a) because (i) the Notices arise from the IITA, the same audit period, and the amount at issue exceeds \$15,000, exclusive of penalties and interest, (ii) Petitioner has remitted the \$500 filing fee and a timely filed petition, and (iii) because Petitioner is represented by counsel authorized to practice law in the State of Illinois.

FACTUAL ALLEGATIONS

6. Petitioner is a professional services business providing financial and employee services to its clients.

7. The financial services Petitioner provides its clients include among others, accounting, tax, financial advisory, risk advisory, merger and acquisition advisory, real estate consulting, and valuation services.

8. Petitioner's employee services include among others, employee benefits, consulting, property and casualty insurance, retirement plan consulting, payroll, life insurance, HR consulting, and executive recruitment.

9. In 1998, Petitioner acquired Medical Management Professionals ("MMP"). MMP was incorporated in Ohio and for the Tax Years had its principal place of business in Chattanooga, Tennessee.

10. MMP offers billing and coding services as well as full-practice management services for hospital-based physicians.

11. MMP operated as a separate practice group from Petitioner's financial and services businesses.

12. During the Tax Years, MMP's operations were managed by its separate and independent President, Chief Financial Officer, Chief Operating Officer, and Chief Compliance Officer.

13. During the Tax Years, MMP maintained its own separate administrative functions including: human resources, IT, marketing, business development, budgeting, financial planning and analysis, among others.

14. Petitioner did not control or direct MMP's business activities.

15. Petitioner's officers and directors were not substantially involved in the operations of MMP.

16. No officer or director of Petitioner provided operational expertise to MMP's management team.

17. Petitioner did not place its employees into MMP's management team.

18. Petitioner did not oversee the day-to-day activities or operations of MMP.

19. Petitioner and MMP utilized different employee handbooks, communication methods to employees, compensation review practices, vacations and sick time benefits, different personnel policies, and bonus plans.

20. Petitioner and MMP had separate time-reporting systems.

21. Petitioner and MMP maintained separate headquarter locations.

22. Petitioner and MMP's separate management teams independently ran each company's operations from their own respective corporate office locations.

23. MMP was not required to report to Petitioner's Board of Directors.

24. Petitioner's reviews of MMP operations were done primarily via quarterly conference calls.

25. Petitioner and MMP had their own controllers, accounting departments, and financial staff.

26. MMP issued its own invoices, handled its own collections, coded its own accounts payable, and managed its own accounts receivable.

27. MMP was not required to participate in Petitioner programs, such as insurance or retirement plans.

28. MMP developed its own strategy for project offerings, site selection, and advertising.

29. MMP did not seek Petitioner approval of ordinary operational decisions.

30. MMP performed its own budgeting, forecasting, fixed assets and financial reporting, and other functions.

31. MMP trade show marketing did not discuss or include Petitioner's trademarks or name.

32. MMP offices were established in close proximity to their customers' locations and were not related to Petitioner's office or customer locations.

33. MMP and Petitioner had separate real estate and facilities managers.

34. MMP generated sufficient cash flow from its activities to fund its operations without any intercompany loans between Petitioner and MMP.

35. Petitioner and MMP maintained separate lock boxes and did not utilize common banking facilities.

36. Petitioner and MMP maintained separate websites, had different logos, letterhead, and business cards, and utilized different software products to perform their respective services.

37. Petitioner and MMP had different business slogans.

38. Petitioner did not perform centralized purchasing for MMP.

39. MMP had its own national purchasing agreements.

40. The majority of the vendors utilized by Petitioner were different than those utilized by MMP.

41. Petitioner and MMP did not have the same customer base. Standards imposed on the accounting profession disallowed Petitioner from providing financial services to MMP clients.

42. Petitioner's operations were governed and regulated by the SEC, FASB, AICPA, and state CPA boards.

43. MMP's operations were governed by HIPAA and other federal and state healthcare regulatory boards and laws.

44. There were no significant flows of value between Petitioner and MMP.

45. Outside analyst noted that MMP lacked synergies with Petitioner's business.

46. Petitioner did not receive dividends from MMP.

47. Petitioner engaged only in the typical parent company investment oversight over MMP.

48. MMP was part of Petitioner's federal consolidated tax return, which Petitioner prepared and charged MMP for its allocated share of the expense.

ILLINOIS INCOME TAX ACT

49. Section 1501(a)(27) of the IITA defines "unitary business group" to mean:

[A] group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other ... Common ownership in the case of corporations is the direct or indirect control or ownership of more than 50% of the outstanding voting stock of the persons carrying on unitary business activity. Unitary business activity can ordinarily be illustrated where the activities of the members are: (1) in the same general line (such as manufacturing, wholesaling, retailing or tangible personal property, insurance, transportation or finance); or (2) are steps in a vertically structured enterprise or process (such as the steps involved in the production of natural resources, which might include exploration, mining, refining, and marketing); and, in either instance, the members are functionally integrated through the exercise of strong centralized management (where, for example, authority over such matters as purchasing, financing, tax compliance, product line, personnel, marketing and capital investment is not left to each member).

50. 86 Ill. Admin. Code § 100.9700(g) further defines a "unitary group" as:

Under the IITA Section 1501(a)(27), no group of persons can be a unitary business group unless they are functionally integrated through the exercise of strong centralized management. It is this exercise of strong centralized management that is the primary indicator of mutual dependency, mutual contribution and mutual integration between persons that is necessary to constitute them members of the same unitary business group. The exercise of strong centralized management will be deemed to exist where

authority over such matters as purchasing, financing, tax compliance, product line, personnel, marketing and capital investment is not left to each member. Thus, some groups of persons may properly be considered as constituting a unitary business group under the IITA Section 1501(a)(27) when the executive officers of one of the persons are normally involved in the operations of the other persons in the group and there are centralized units that perform for some or all of the persons functions that truly independent persons would perform for themselves. Note in this connection that neither the existence of central management authority, nor the exercise of that authority over any particular function (through centralized operations), is determinative in itself; the entire operations of the group must be examined in order to determine whether or not strong centralized management exists. A finding of “strong centralized management” cannot be supported merely by showing that the requisite ownership percentage exists or that there is some incidental economic benefit accruing to a group because such ownership improves its financial position. Both elements of strong centralized management, i.e., strong centralized management authority and the exercise of that authority through centralized operations, must be present in order for persons to be a unitary business group under IITA Section 1501(a)(27).

51. In *Dow Chemical Co. v. Department of Rev*, 832 N.E.2d 284 (2005), the Illinois Supreme Court concluded that the “Department was not free to ignore its own regulation requiring both central management authority and the use of that authority in centralized operations for a finding of strong centralized management.”

52. In *A.B. Dick Company v. McGraw* 678 N.E.2d 1100 (4th Dist. 1997), the court concluded that more than common ownership is required for a unitary business. There must be more than the type of occasional oversight “that any parent gives to an investment in a subsidiary.”

Based on the foregoing, Petitioner asserts the following errors related to the Notices:

ERROR I

(ILLINOIS IS PROHIBITED FROM TAXING THE GAIN UNDER THE DUE PROCESS AND COMMERCE CLAUSES OF THE UNITED STATES CONSTITUTION)

53. Petitioner realleges and reincorporates paragraphs 1 through 53 of this Petition herein.

54. The Due Process Clause of the Fourteenth Amendment and the Commerce Clause of the United States Constitution mandate that a state may not, when imposing an income or franchise tax, “tax value earned outside its borders.” *ASARCO Inc. v. Idaho State Tax Comm’n*, 458 U.S. 307, 315 (1982).

55. The above principle rests on the fundamental requirement that there must be a “minimal connection between the interstate activities and the taxing state ... and there must be a rational relation between the income attributed to the taxing state and the intrastate value of the corporate business.” *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768, 772 (1992).

56. In *Allied-Signal*, the U.S. Supreme Court indicated that, in the case of income from capital transactions, the two fundamental constitutional requirements are satisfied by showing either that the taxpayer and the corporation that was the source of the income have a unitary business relationship or the capital serves an operational rather than an investment function (the “operational function test”). *Allied-Signal* 504 U.S. at 787.

57. In *MeadWestvaco Corp. v. Illinois Dep’t of Rev.*, 553 U.S. 16 (2008), the U.S. Supreme Court clarified its reference to the operational function test in *Allied-Signal* and explained that the operational function test was not intended to modify the unitary business principle by adding a new ground for apportionment, but rather the operational function test “simply recognizes that an asset can be part of a taxpayer’s unitary business even if what we may term a ‘unitary relationship’ does not exist between the payor and payee.” *Id.* at 29.

58. The Court in *MeadWestvaco* went on to hold that where the asset in question is another business, the “hallmarks” of a unitary business are functional integration, centralized management, and economies of scale. *Id.*; see also *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 166 (1983).

59. Petitioner’s business activities are separate and distinct from the business activities of MMP.

60. MMP’s officers and employees managed the day-to-day operations of MMP’s business without direction or input from Petitioner or Petitioner’s management team.

61. There was no functional integration, centralized management, and economies of scale between Petitioner and MMP.

62. MMP’s business activities were completely unrelated to the activities conducted by Petitioner in Illinois and neither contributed to nor were dependent upon activities of each other.

63. The Department’s taxation of Petitioner’s Gain on the sale of MMP is improper because Petitioner and MMP were not engaged in a unitary business.

64. Petitioner’s acquisition of MMP served an investment function.

65. The Department’s taxation of the Gain violates the Due Process and Commerce Clauses of the United States Constitution because it results in the inclusion of income that bore no relationship to activities conducted in Illinois by Petitioner.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) declare that Due Process and Commerce Clauses of the United States Constitution bar the Department from taxing the Gain realized by Petitioner;
- (c) declare that there was no unitary relationship between Petitioner and MMP;
- (d) declare the acquisition of MMP served an investment function;

- (e) declare there is no tax deficiency for the Tax Years in question;
- (f) direct the Department to withdraw the Notices; and
- (g) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR II

(THE GAIN CONSTITUTES NONBUSINESS INCOME UNDER THE ACT)

66. Petitioner realleges and reincorporates paragraphs 1 through 66 of this Petition herein.

67. Under the IITA, a corporation's income is classified as either "business income" or "nonbusiness income." 35 ILCS 5/1501(a)(1),(13).

68. During the Tax Years, the IITA defined the term "business income" as "all income that may be treated as apportionable business income under the Constitution of the United States." 35 ILCS 5/1501(a)(1).

69. The term "nonbusiness income" means "all income other than business income or compensation." 35 ILCS 5/1501(a)(13).

70. A non-resident multistate taxpayer is required to apportion all business income to Illinois using a single sales factor apportionment formula. 35 ILCS 5/304(h)(3).

71. Nonbusiness income from the sale of intangible personal property is allocated to a taxpayer's commercial domicile. 35 ILCS 5/303(b)(3).

72. For the Gain to constitute apportionable business income, Petitioner and MMP must be engaged in a unitary business relationship; requiring them to be functionally integrated, centrally managed, and mutually benefiting from economies of scale. *See MeadWestvaco Corp v. Illinois Dep't of Rev.*, 553 U.S. 16 (2008); *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768 (1992); *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159 (1983), *ASARCO Inc. v. Idaho State Tax Comm'n* 458 U.S. 307 (1982).

73. Petitioner's business is separate and distinct from MMP's business.

74. There was no functional integration, centralized management, and economies of scale between Petitioner and MMP.

75. The Department's taxation of the Gain is improper because Petitioner and MMP were not engaged in a unitary business.

76. The Department's classification of the Gain as apportionable business income is erroneous.

77. The Gain is properly classified as nonapportionable nonbusiness income.

78. The Gain is not allocable to Illinois because Petitioner does not maintain its commercial domicile in Illinois.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) declare that Gain is nonapportionable nonbusiness income;
- (c) declare the Gain is not allocable to Illinois;
- (d) declare there is no tax deficiency for the Tax Years;
- (e) direct the Department to withdraw the Notices; and
- (f) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR III

(IN THE ALTERNATIVE, IF IT IS DETERMINED THAT THE GAIN CONSTITUTES APPORTIONABLE BUSINESS INCOME, THE GROSS PROCEEDS MUST BE INCLUDED IN THE DENOMINATOR OF PETITIONER'S SALES FACTOR)

79. Petitioner realleges and reincorporates paragraphs 1 through 79 of this Petition herein.

80. A non-resident multistate taxpayer is required to apportion all business income to Illinois using a single sales factor. 35 ILCS 5/304(h)(3).

81. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in Illinois during the tax year, and the denominator of which is the total sales of the taxpayer everywhere during the tax year. 35 ILCS 5/304(a)(3)(A).

82. The term “sales” is defined as all gross receipts not allocated under the provisions of the IITA. 35 ILCS 5/1501(a)(21).

83. A Department regulation provides that the term “sales” means all gross receipts derived by the taxpayer from transactions and activity in the regular course of such trade or business. 86 Ill. Admin. Code § 100.3370(a)(1).

84. In the case of income from intangible personal property, the sale is in Illinois if the income-producing activity is performed in the State or if, a greater proportion of the income producing activity of the taxpayer is performed within the State than in any other state, based on performance costs. *See*, 35 ILCS 5/304(a)(3)(C-5)(iii)(b).

85. The term “cost of performance” is defined as the direct costs determined in a manner consistent with generally accepted accounting principles. 86 Ill. Admin. Code § 100.3370(c)(3)(B).

86. If the standard allocation and apportionment provisions do not fairly represent the market for the taxpayer’s good, services, or other sources of business income, the taxpayer may petition for, or the Department may require, an alternative method of apportionment. 35 ILCS 5/304(f).

87. The party, the Department, or the taxpayer, seeking to utilize an alternative apportionment method has the burden of going forward with evidence and proving by clear and cogent evidence that the statutory formula results in the taxation of extraterritorial values and operates unreasonably and arbitrarily in attributing to Illinois a percentage of income which is

out of all proportion to the business transacted in the State. 86 Ill. Admin. Code § 100.3390(c); *see also AT&T Teleholdings, Inc. v. Dep't of Rev.*, 978 N.E.2d 371 (1st Dist. 2012).

88. The party seeking to use an alternative apportionment formula must go forward with the evidence and prove that the proposed alternative apportionment method fairly and accurately apportions income to Illinois based upon business activity in the State. 86 Ill. Admin Code § 100.3390(c).

89. A Department regulation describes instances in which the standard statutory apportionment provisions are presumed to not fairly represent the extent of a taxpayer's business activity in the State and sets forth alternative apportionment methodologies to apply in those instances. 86 Ill. Admin. Code § 100.3380 (the "Alternative Apportionment Regulation").

90. The Alternative Apportionment Regulation provides that "[w]hen gross receipts arise from an incidental or occasional sale of assets used in the regular course of the person's trade or business, such gross receipts shall be excluded from the sales factor." 86 Ill. Admin. Code § 100.3380(c)(2) (the "Asset Provision").

91. Petitioner is required to apportion all business income to Illinois using a single sales factor apportionment formula.

92. If it is determined that the Gain constitutes apportionable business income, the gross proceeds constitute a "sale" under the plain language of the statute and therefore must be included in the denominator of Petitioner's sales factor under the standard statutory apportionment formula.

93. If it is determined that the Gain constitutes apportionable business income, none of the gross proceeds may be included in the numerator of Petitioner's sales factor under the

standard statutory apportionment formula because none of the income producing activity related to the sale was performed in Illinois.

94. The Alternative Apportionment Regulation is invalid because it presumes distortion in certain instances in clear violation of the statute, which requires a showing that the standard apportionment provisions do not fairly represent the market for a taxpayer's goods, services, or other sources of business income.

95. The Asset Provision is invalid and may not be applied to exclude the gross proceeds from Petitioner's sales factor because the Department has not provided any evidence that the standard allocation and apportionment provisions do not fairly represent the market for Petitioner's good, services, or other sources of business income.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) declare that the Gain must be included in the denominator of Petitioner's sales factor;
- (c) declare that none of the income-producing activity related to the sale of MMP was performed in Illinois;
- (d) declare that none of the Gain be included in the numerator of Petitioner's sales factor; and
- (e) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR IV

(IN THE ALTERNATIVE, IF IT IS DETERMINED THAT THE GAIN CONSTITUTES APPORTIONABLE BUSINESS INCOME AND THE ALTERNATIVE APPORTIONMENT REGULATION IS VALID, THE GAIN MUST BE INCLUDED IN THE DENOMINATOR OF PETITIONER'S SALES FACTOR)

96. Petitioner realleges and reincorporates paragraphs 1 through 96 of this Petition herein.

97. A non-resident multistate taxpayer is required to apportion all business income to Illinois using a single sales factor apportionment formula. 35 ILCS 5/304(h)(3).

98. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in Illinois during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year. 35 ILCS 5/304(a)(3)(A).

99. The term “sales” is defined as all gross receipts not allocated under the provisions of the IITA. 35 ILCS 5/1501(a)(21).

100. The Alternative Apportionment Regulation contains a provision stating that “[i]n the case of sales of business intangibles (including, by means of example, without limitation, patents, copyrights, bonds, stocks, and other securities), gross receipts shall be disregarded and only the net gain (loss) therefrom should be included in the sales factor.” 86 Ill. Admin Code § 100.3380(c)(5) (the “Business Intangibles Provision”).

101. Petitioner is required to apportion all business income to Illinois using a single sales factor apportionment formula.

102. If it is determined that the Gain constitutes apportionable business income and the Alternative Apportionment Regulation is valid, the Gain must be included in the denominator of Petitioner’s sales factor pursuant to the Business Intangible Provision.

103. If it is determined that the Gain constitutes apportionable business income and the Alternative Apportionment Regulation is valid, none of the Gain may be included in the numerator of Petitioner’s sales factor because none of the income-producing activity related to the sale was performed in Illinois.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) find that the Gain be included in the denominator of Petitioner’s sales factor;
- (c) find none of the income-producing activity related to the sale of MMP was performed in Illinois;
- (d) find none of the Gain be included in the numerator of Petitioner’s sales factor; and

- (e) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR V

(IN THE ALTERNATIVE, IF IT IS DETERMINED THAT THE GAIN CONSTITUTES APPORTIONABLE BUSINESS INCOME THE NOTICE VIOLATES THE DUE PROCESS AND COMMERCE CLAUSES OF THE UNITED STATES CONSTITUTION)

104. Petitioner realleges and reincorporates paragraphs 1 through 104 of this Petition herein.

105. Pursuant to the Due Process Clause and the Commerce Clause of the United States Constitution, a state income tax is invalid unless it is fairly apportioned. *Container Corp of America v. Franchise Tax Bd.*, 463 U.S. 159 (1983).

106. For a tax to be “fairly apportioned” the measure of tax must be reasonably related to the extent of the contact with the taxing state, since it is the activities of the taxpayer in the state that may be made to bear a just share of the state’s tax burden. *Id.*

107. The Notices violate both the Due Process and Commerce Clauses of the United States Constitution because, if no receipts from the Sale are included in the denominator of Petitioner’s sales factor, the tax payable to Illinois by Petitioner is out of all appropriate proportion to and does not fairly represent, the business conducted by Petitioner in Illinois. *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768 (1992); *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159 (1983); *ASARCO, Inc. v. Idaho State Tax Comm’n*, 458 U.S. 307 (1982); *F.W. Woolworth Co. v. Taxation and Rev. Dep’t*, 458 U.S. 354 (1982); *Hans Rees’ Sons, Inc. v. North Carolina*, 283 U.S. 123 (1931).

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) find that to produce a fair apportionment method that is consistent with the Due Process and Commerce Clauses of the United States Constitution the Gain should be included in the denominator of the sales factor; and
- (c) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR VI

(IN THE ALTERNATIVE, IF IT IS DETERMINED THAT THE GAIN CONSTITUTES APPORTIONABLE BUSINESS INCOME, EXCLUSION OF RECEIPTS FROM THE SALE FROM THE DENOMINATOR OF THE SALES FACTOR DOES NOT FAIRLY REFLECT THE BUSINESS ACTIVITIES OF PETITIONER IN ILLINOIS AND LEADS TO A GROSSLY DISTORTED RESULT)

108. Petitioner realleges and reincorporates paragraphs 1 through 108 of this Petition herein.

109. If the standard allocation and apportionment provisions do not fairly represent the market for the taxpayer's goods, services, or other sources of business income the taxpayer may petition for, or the Department may require, an alternative method of apportionment. 35 ILCS 5/304(f).

110. Courts have deviated from the application of otherwise valid statutory apportionment formulas when application of the formula results in the attribution of income to a state that in no way reflects the business activities conducted by the taxpayer in the state. *See, e.g., Hans Rees' Sons v. North Carolina*, 283 U.S. 123 (1931); *Miami Corp v. Department of Rev.*, 571 N.E.2d 800 (1st Dist. 1991).

111. If receipts from the sale are excluded from the denominator of Petitioner's sales factor, the apportionment formula does not fairly represent the market for Petitioner's goods, services, or other sources of business income or the extent of Petitioner's business activity in Illinois.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) find that inclusion of Gains from the sale in the denominator of Petitioner's sales factor is necessary to fairly represent the market for Petitioner's goods, services and other sources of business income and the extent of Petitioner's business activity in Illinois; and
- (c) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR VII

(PETITIONER IS ENTITLED TO REASONABLE EXPENSES AND ATTORNEY'S FEES)

112. Petitioner realleges and reincorporates paragraphs 1 through 112 of this Petition herein.

113. The Illinois Administrative Procedure Act provides: "[i]n any case in which a party has any administrative rule invalidated by a court for any reason ... the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fee." 5 ILCS 100/10-55(c).

114. To the extent the Alternative Apportionment Regulation is declared invalid, the Petitioner is entitled to the reasonable expenses of litigation, including reasonable attorney's fees.

WHEREFORE, to the extent the Alternative Apportionment Regulation is declared invalid under Error III, Petitioner prays that the Tax Tribunal, as applicable,

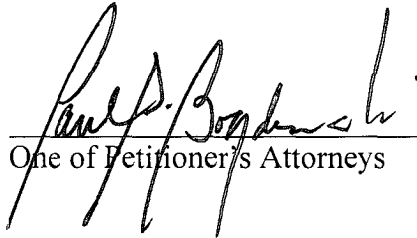
- (a) enter judgment in favor of Petitioner declaring that Petitioner is entitled to the reasonable expenses of litigation, including reasonable attorney's fee; and

(b) grant Petitioner any further relief the Tax Tribunal deems appropriate

Respectfully submitted,

CBIZ WEST INC.,
Petitioner

By:

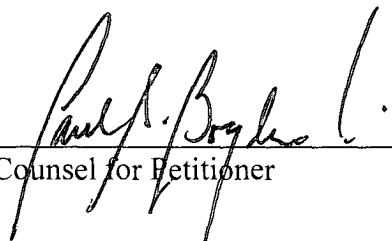

One of Petitioner's Attorneys

Paul G. Bogdanski
David P. Dorner
REED SMITH LLP
10 S. Wacker Drive, 40th Floor
Chicago, Illinois 60606
(312) 207-2402
ddorner@reedsmith.com

April 26, 2019

CERTIFICATE OF FILING AND SERVICE

I hereby certify that an original and two copies of the foregoing Petition were filed via hand-delivery with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, Illinois 60601, along with the filing fee of \$500; and one copy was served by certified mail on the Illinois Department of Revenue, Office of Legal Services, 100 W. Randolph St., 7-900, Chicago, Illinois 60601, this 26th day of April, 2019.



Counsel for Petitioner

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



RECEIVED - CBIZ

#BWNKMGV
#CNXX X186 9252 7848#
CBIZ WEST INC
6050 OAK TREE BLVD STE 500
INDEPENDENCE OH 44131-6951

MAR 8 2019

6050 Oaktree Blvd S

March 4, 2019



Letter ID: CNXXX18692527848

Taxpayer ID: 20-2101981
Audit ID: A1322352640
Reporting period: December 2012
Total Deficiency: \$12,964.92
Balance due: \$12,964.92

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue", write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed, but the total penalties and interest is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases**, file a protest with us, the Illinois Department of Revenue, within **60 days** of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due which, may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

David Harris
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 782-8064

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns. For those under the bankruptcy protection, this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that

overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



#BWNKMGV
#CNXX X1X6 3946 4162#
CBIZ WEST INC
6050 OAK TREE BLVD STE 500
INDEPENDENCE OH 44131-6951

March 4, 2019



Letter ID: CNXXX1X639464162

Taxpayer ID: 20-2101981
Audit ID: A1322352640
Reporting period: December 2013
Total Deficiency: \$473,562.41
Balance due: \$473,562.41

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue", write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed, but the total penalties and interest is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases**, file a protest with us, the Illinois Department of Revenue, within **60 days** of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due which, may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

David Harris
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
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