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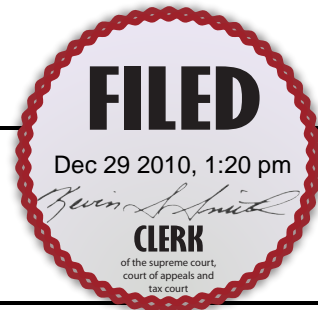
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**IN THE
INDIANA TAX COURT**

UNITED PARCEL SERVICE, INC.)

Petitioner,)

v.)

Cause No. 49T10-0704-TA-24)

INDIANA DEPARTMENT OF)
STATE REVENUE,)

Respondent.)

ORDER ON PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

NOT FOR PUBLICATION

December 29, 2010

FISHER, J.

United Parcel Service, Inc. (UPS) challenges the final determination of the Indiana Department of State Revenue (Department) that: a) denied UPS's claim for refund of corporate income taxes paid for the year ending December 31, 2000; and b) assessed UPS with an additional corporate income tax liability for the year ending December 31, 2001 (the years at issue). The matter is currently before the Court on the

parties' cross-motions for summary judgment. The parties present one issue for the Court's consideration: whether, during the years at issue, UPS properly excluded from its Indiana corporate income tax returns the income of two of its affiliates because they were "subject to" the gross premium privilege tax (premiums tax) under Indiana Code § 27-1-18-2.

FACTS AND PROCEDURAL HISTORY

The following facts are undisputed. UPS and its affiliates ("the affiliated group") form the world's largest package delivery company. (Pet'r Des'g Evid. at Jt. Stip. ¶ 1.) During the years at issue, UPS's affiliated group included two foreign reinsurance companies: UPINSCO, Inc. ("UPINSCO") and UPS Re Ltd. ("UPS Re").^{1,2} (Pet'r Des'g Evid. at Jt. Stip. ¶¶ 5-6, 8 (footnotes added).)

Prior to 2001, UPS included the income of UPINSCO and UPS Re on the affiliated group's Indiana corporate income tax returns.³ (Pet'r Des'g Evid. at Jt. Stip. ¶ 8 (footnote added).) It did not, however, include their income on the 2001 return. (Pet'r

¹ A reinsurance company "indemnifies, for a premium, another insurance company against all or part of the loss that it may sustain under its policy or policies of insurance." (Pet'r Des'g Evid. Ex. 40 at 1.)

² UPINSCO was formed in 1994 under the laws of the U.S. Virgin Islands. (Pet'r Des'g Evid. at Jt. Stip. ¶ 5.) It reinsured workers compensation and other risks of several UPS operating subsidiaries; the primary insurance on those risks was covered by Liberty Mutual Insurance Company. (Pet'r Des'g Evid. at Jt. Stip. ¶ 5.) UPS Re was formed in 1999 under the laws of Bermuda. (Pet'r Des'g Evid. at Jt. Stip. ¶ 6.) It reinsured risks for loss of or damage to packages shipped via UPS; the primary insurance on these risks was provided to shippers under policies issued by National Union Fire Insurance Company of Pittsburgh or Illinois National Insurance Company, both subsidiaries of American International Group, Inc. (Pet'r Des'g Evid. at Jt. Stip. ¶ 6.)

³ Since 1983, UPS's affiliated group has used the worldwide unitary combined method of reporting when filing its consolidated Indiana corporate income tax returns. (Pet'r Des'g Evid. at Jt. Stip. ¶¶ 3-4.) (See *also* Pet'r Des'g Evid. Exs. 16-31.)

Des'g Evid. at Jt. Stip. ¶ 10.) UPS subsequently amended the affiliated group's 2000 return in order to remove the income of UPINSCO and UPS Re. (Pet'r Des'g Evid. at Jt. Stip. ¶ 9.) Based on the amended return, UPS sought a refund of \$359,466 in income taxes initially paid to Indiana for 2000. (Pet'r Des'g Evid. at Jt. Stip. ¶ 9.)

After conducting an audit, the Department determined that UPS should have included the income of UPINSCO and UPS Re on the affiliated group's tax returns. (Pet'r Des'g Evid. at Jt. Stip. ¶ 11.) As a result, the Department denied UPS's claim for refund for tax year 2000. In addition, the Department added-back the income of UPINSCO and UPS Re for the 2001 tax year, assessing UPS with an additional income tax liability of \$291,105. (Pet'r Des'g Evid. at Jt. Stip. ¶ 11.) UPS protested the Department's audit findings with no success.

On April 20, 2007, UPS filed an original tax appeal. On March 12, 2010, UPS filed a motion for summary judgment. That same day, the Department filed its own motion for summary judgment. The Court conducted a hearing on the parties' motions on August 16, 2010. Additional facts will be provided as necessary.

STANDARD OF REVIEW

Summary judgment is appropriate only when the designated evidence demonstrates that no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). Cross-motions for summary judgment do not alter this standard. *Horseshoe Hammond, LLC v. Ind. Dep't of State Revenue*, 865 N.E.2d 725, 727 (Ind. Tax Ct. 2007), *review denied*.

DISCUSSION AND ANALYSIS

During the years at issue, corporate income was subject to several taxes. One of

those taxes, the adjusted gross income tax, was imposed “on that part of the adjusted gross income derived from sources within Indiana of every corporation.”⁴ See IND. CODE ANN. § 6-3-2-1(b) (West 2000) (amended 2002) (footnote added). Nevertheless, “there shall be no tax on the adjusted gross income of . . . [i]nsurance companies *subject to* [the premiums] tax under IC 27-1-18-2.” IND. CODE ANN. § 6-3-2-2.8(4) (West 2000) (amended 2002) (emphasis added).⁵ Indiana Code § 27-1-18-2 provided in relevant part:

- (a) Every insurance company not organized under the laws of this state, and each domestic company electing to be taxed under this section, and doing business within this state shall, on or before March 1 of each year, report to the department [of insurance], under the oath of the president and secretary, the gross amount of all premiums received by it on policies of insurance covering risks within this state[.] . . . From the amount of gross premiums . . . shall be deducted:
 - (1) considerations received for reinsurance of risks within this state from companies authorized to transact an insurance business in this state;
 - (2) the amount of dividends paid or credited to

⁴ The adjusted gross income tax is an apportioned tax designed to reach income from interstate transactions. See *Ind. Dep’t of State Revenue v. Bethlehem Steel Corp.*, 639 N.E.2d 264, 266 n.4 (Ind. 1994). The legislature enacted this tax in 1963 in reaction to the U.S. Supreme Court’s ruling that Indiana’s unapportioned gross income tax could not constitutionally reach proceeds from interstate commerce (and, as a result, Indiana was losing revenue). See *id.* (citations omitted). The gross income tax and the adjusted gross income tax formed a single tax scheme, under which corporations were given a credit on their adjusted gross income tax liability for gross income taxes paid. See *id.* Indiana’s gross income tax was repealed effective January 1, 2003. See P.L. 192-2002(ss), § 191.

⁵ Prior to 2003, Indiana Code § 6-3-2-2.8(4) exempted from adjusted gross income tax “[i]nsurance companies subject to tax under IC 27-1-18-2.” IND. CODE ANN. § 6-3-2-2.8(4) (West 2000) (amended 2002). Effective January 1, 2003, the legislature amended that provision to read “[i]nsurance companies subject to tax under IC 27-1-18-2, including a domestic insurance company that elects to be taxed under IC 27-1-18-2.” See P.L. 192-2002(ss), § 74. *Cf. with* IND. CODE ANN. § 27-1-18-2 (2000) (which already provided that domestic insurance companies could elect to be taxed under that section).

resident insureds, or used to reduce current premiums of resident insureds;

(3) the amount of premiums actually returned to residents on account of applications not accepted or on account of policies not delivered; and

(4) the amount of unearned premiums returned on account of the cancellation of policies covering risks within the state.

(c) For the privilege of doing business in this state, every insurance company required to file the report provided in this section shall pay into the treasury of this state an amount equal to the excess, if any, of the gross premiums over the allowable deductions multiplied by the following rate for the year that the report covers:

(1) For 2000, two percent (2%).

(2) For 2001, one and nine-tenths percent (1.9%).

(i) Any insurance company failing or refusing, for more than thirty (30) days, to render an accurate account of its premium receipts as provided in this section and pay the tax due thereon shall be subject to a penalty of one hundred dollars (\$100) for each additional day such report and payment shall be delayed, not to exceed a maximum penalty of ten thousand dollars (\$10,000). The penalty may be ordered by the commissioner [of the department of insurance] after a hearing under IC 4-21.5-3. The commissioner may revoke all authority of such defaulting company to do business within this state, or suspend such authority during the period of such default, in the discretion of the commissioner.

IND. CODE ANN. § 27-1-18-2(a), (c), (i) (West 2000).

In its motion for summary judgment, UPS argues that it properly excluded the income of UPINSCO and UPS Re from the affiliated group's Indiana corporate income tax returns for the years at issue because they were "subject to" the premiums tax under Indiana Code § 27-1-18-2: UPINSCO and UPS Re were foreign reinsurance

companies that received premiums on policies of insurance covering risks within Indiana. (See Pet'r Br. Supp. Mot. Summ. J. at 14; Pet'r Resp. Br. Supp. Mot. Summ. J. at 2.) In its motion for summary judgment, however, the Department argues that the income of UPINSCO and UPS Re should have been included on the affiliated group's corporate returns because they were *not* "subject to" the premiums tax: neither filed a premiums tax return nor paid any premiums tax.⁶ (Resp't Br. Supp. Mot. Summ. J. at 4-6 (footnote added).)

Unless specifically defined, statutory words will be given their plain, ordinary and usual meaning, as presented in the dictionary. *Johnson County Farm Bureau Coop. Ass'n v. Ind. Dep't of State Revenue*, 568 N.E.2d 578, 580-81 (Ind. Tax Ct. 1991), *aff'd* by 585 N.E.2d 1336 (Ind. 1992). Consequently, to be "subject to" the premiums tax under Indiana Code § 6-3-2-2.8(4) does not mean that one must "pay" the premiums tax; rather, it simply means that one is "placed under the authority, dominion, control, or influence" of the premiums tax under § 27-1-18-2.⁷ See WEBSTER'S THIRD NEW INT'L DICTIONARY 2275 (2002 ed.) (footnote added). This is reinforced by the fact that while

⁶ UPS acknowledges that neither UPINSCO nor UPS Re filed a premiums tax return with the Department of Insurance as required under Indiana Code § 27-1-18-2. (Pet'r Des'g Evid. at Jt. Stip. ¶ 16.) (See *also* Pet'r Des'g Evid. Ex. 42.) UPS asserts, however, that UPINSCO and UPS Re did not need to file the returns because they had no premiums tax liability: "the 'gross amount of all premiums' [received by UPINSCO and UPS Re] under the first paragraph of I.C. §27-1-18-2(a) was exactly equal to the deduction authorized by subsection (a)(1) and the resulting amount of reinsurance premiums subject to the Indiana premiums tax was zero." (Pet'r Br. Supp. Mot. Summ. J. at 15.) (See *also* Oral Argument Tr. at 9.)

⁷ In turn, while certain income may be "subject to" a tax, that income may, in the course of computing an actual tax liability, be "netted out" and, as a result, no tax is ultimately due. See A.I.C. § 27-1-18-2(c) (stating that "every insurance company required to file the report provided in this section shall pay into the treasury of this state an amount equal to the excess, *if any*, of the gross premiums over the allowable deductions multiplied by the [applicable tax] rate") (emphasis added).

domestic insurance companies can *elect* to be “subject to” the premiums tax, foreign insurance companies clearly do not have that option. A.I.C. § 27-1-18-2(a), (i) (mandating that insurance companies not organized under Indiana law file the premiums tax return annually or be subject to a penalty).

CONCLUSION

Statutes relating to the same general subject matter are *in pari materia* and will be construed together so as to produce a harmonious result. *Ind. Dep’t of State Revenue, Inheritance Tax Div. v. Estate of Pickerill*, 855 N.E.2d 1082, 1085 (Ind. Tax Ct. 2006) (citation omitted). Indiana Code § 6-3-2-2.8(4), in conjunction with Indiana Code § 27-1-18-2, clearly demonstrate that UPINSCO and UPS Re were “subject to” the premiums tax under Indiana Code § 27-1-18-2. The Court therefore GRANTS UPS’s motion for summary judgment and DENIES the Department’s motion for summary judgment. The Department’s denial of UPS’s claim for refund of corporate income tax for 2000 and its assessment of additional corporate income tax against UPS for 2001 are REVERSED. The parties shall bear their own costs.

SO ORDERED this 29th day of December, 2010.

Thomas G. Fisher, Judge
Indiana Tax Court

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