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IN THE
INDIANA TAX COURT

JEFFERSON SMURFIT CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 49T10-0002-TA-16
	)	
INDIANA DEPARTMENT OF STATE REVENUE,	)	
	)	
	)	
Respondent.	)	

ORDER ON PARTIES' CROSS-MOTIONS
FOR SUMMARY JUDGMENT

NOT FOR PUBLICATION
September 8, 2005

FISHER, J.

Jefferson Smurfit Corporation (Smurfit) challenges the Indiana Department of State Revenue's (Department) final determination assessing it with gross income tax for the year ending December 31, 1988 (the year at issue). The matter is currently before the Court on the parties' cross-motions for summary judgment. The sole issue for the Court to decide is whether Smurfit's receipts from the sale of certain intangibles are subject to Indiana's gross income tax.

FACTS AND PROCEDURAL HISTORY

The material facts as they relate to this case are undisputed. Smurfit is a multistate corporation which manufactures and sells paper-based packaging products. Smurfit is incorporated in Delaware, maintains its principal office in St. Louis, Missouri, and operates approximately 150 manufacturing facilities throughout the United States, including Indiana.

During the year at issue, Smurfit closed two of its Indiana manufacturing facilities: one in New Castle and the other in Aurora. In connection with these closings, Smurfit sold its customer lists (which included contact information and customer specifications) ("the intangibles") to Container Corporation of America (CCA).

At all relevant times, Smurfit was a fifty percent owner of CCA. The owner of the remaining fifty percent was Morgan Stanley, whose main offices were in New York, New York. All negotiations regarding the sale of the intangibles, as well as all transfers of funds and execution of documents related thereto, were handled between Smurfit's Missouri office and Morgan Stanley's New York offices. The business associated with the intangibles was eventually transferred to CCA plants in Ohio, Kentucky, and Indiana.

In January of 1993, after completing an audit, the Department determined that Smurfit owed Indiana gross income tax on the income it received from the sale of the intangibles. Smurfit subsequently challenged the assessment. In a letter of findings dated August 26, 1999, the Department denied Smurfit's claim.

Smurfit initiated this original tax appeal on February 15, 2000. On May 16, 2001, Smurfit filed a motion for summary judgment. On February 15, 2002, the Department filed its cross-motion for summary judgment. The Court conducted a hearing on the parties' motions on April 2, 2002. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court reviews final determinations of the Department *de novo*. IND. CODE ANN. § 6-8.1-5-1(h) (West Supp. 2004-2005). Accordingly, the Court is bound by neither the evidence nor the issues presented at the administrative level. *Snyder v. Indiana Dep't of State Revenue,* 723 N.E.2d 487, 488 (Ind. Tax Ct. 2000), *review denied*.

A motion for summary judgment will be granted only when there is no genuine issue of material fact 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. *Snyder*, 723 N.E.2d at 488. At the time a party files a motion for summary judgment, "[it] shall designate to the court all parts of pleadings, depositions, answers to interrogatories, admissions, matters of judicial notice, and any other matters on which it relies for purposes of the motion." T.R. 56(C).

DISCUSSION AND ANALYSIS

Indiana imposes a gross income tax "upon the receipt of[] . . . the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or domiciliary of Indiana." IND. CODE ANN. § 6-2.1-2-2(a)(2) (West 1998) (repealed 2002). "'Taxable gross income' means the remainder of: (1) all gross income which is not exempt from tax under IC 6-2.1-3; less (2) all deductions which are allowed under IC 6-2.1-4." IND. CODE ANN. § 6-2.1-1-13 (West 1998) (repealed 2002). Accordingly, the taxability of a non-resident taxpayer like Smurfit is dependent upon an affirmative answer to each of following of three inquiries: 1) do the taxpayer's receipts constitute "gross income," 2) is the taxpayer's "gross income" derived from "sources within Indiana," and 3) is the "gross income" that is derived from "sources within Indiana" "taxable

gross income?" *See Bethlehem Steel Corp. v. Indiana Dep't of State Revenue,* 597 N.E.2d 1327, 1330 (Ind. Tax Ct. 1992), *aff'd,* 639 N.E.2d 264 (Ind. 1994). The parties agree that Smurfit's receipts from the sale of the intangibles constitutes gross income. (*See* Pet'r Br. for Summ. J. (hereinafter Pet'r Br.) at 3-5; Resp't Resp. to Mot. for Summ. J (hereinafter Resp't Br.) at 4.) *See also* IND. CODE ANN. § 6-2.1-1-2(a)(3) (West 1998) (repealed 2002). Thus, the Court turns to the second question: whether Smurfit's receipts from the sale of the intangibles were derived from "sources within Indiana."

Two tests are used to determine whether the income from the sale of an intangible has an Indiana source: the "business situs" test and the "commercial domicile" test. *See Bethlehem Steel,* 597 N.E.2d at 1334-35. Unless a taxpayer is commercially domiciled in Indiana, however, the "commercial domicile" test is irrelevant because the analysis under the test is identical to the analysis under the "business situs" test. *See id.* at 1335. Because Indiana is not Smurfit's "commercial domicile," the Court need only apply the "business situs" test. Accordingly, Smurfit's total gross income derived from the sale of the intangibles is subject to Indiana's gross income tax if, during the year at issue: 1) Smurfit had a "business situs" in Indiana, and 2) the sale of the intangibles formed an "integral" part of Smurfit's in-state activities. *See id.* at 1337 (citing IND. ADMIN. CODE tit. 45, r. 1-1-51 (1988) (repealed 1999)).[1]

[1] It is at this juncture that the Court must make a couple of points. First, the Department's regulation in effect during the year at issue provided the following explanation of the "business situs" test: "if a taxpayer has a 'business situs' in Indiana . . . and the intangible or the income derived therefrom is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes." IND. ADMIN. CODE tit. 45, r. 1-1-51 (1988) (repealed 1999). In applying that test in light of existing case law, both this Court and the Indiana Supreme Court emphasized the fact that it was not the intangible itself that was required to be "integral" to the business activities at the Indiana situs, but rather whether

In applying this test to the case at bar, this Court concludes that Smurfit's sale of the intangibles was not "integrally related" to its business activities conducted at its New Castle and Aurora manufacturing plants.[2] First, Smurfit neither sold its Indiana paper manufacturing operations nor its plants associated with those operations; rather, it only sold its customer lists and specifications. In turn, the activities surrounding Smurfit's sale of these intangibles all occurred outside Indiana: the negotiations, the purchaser, the closing, the transfer of funds and, most importantly, Smurfit's decision to sell. *Cf. with id.* at 1336-37. Finally, any work stemming from the customer lists and specifications was not so intrinsically linked to Smurfit's New Castle and Aurora operations that it could be not be transferred for completion elsewhere.[3]

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the activities related to the critical transaction (i.e., the transaction giving rise to the income) were sufficient to uphold taxation in Indiana. *See Bethlehem Steel Corp. v. Indiana Dep't of State Revenue,* 597 N.E.2d 1327, 1336-37 (Ind. Tax Ct. 1992) ("*Bethlehem I*"); *Indiana Dep't of State Revenue v. Bethlehem Steel Corp.,* 639 N.E.2d 264, 267-68 (Ind. 1994) ("*Bethlehem II*"). In other words, "[t]he [] analysis [] weighs the degree of related activity at a 'business situs' to determine if it is more than minimal and not remote or incidental to the transaction giving rise to the income instead of analyzing whether the Indiana activities are 'necessary' and 'essential' to the transaction." *Bethlehem I,* 597 N.E2d at 1337. *See also Bethlehem II,* 639 N.E.2d at 270 (stating that "[t]hese precedents establish that whether a nondomiciliary's gross income from an intangible derives from an Indiana 'source' depends on the relationship between Indiana and the actors, activities, and property *creating* the income" (citation omitted) (emphasis added)).

Second, the Department's final determination in this case indicates that it did not even rely on 45 IAC 1-1-51 for imposing the tax on Smurfit's income derived from the sale of the intangibles. Rather, it relied on the version of the regulation in effect at the time it made its final determination in 1999. (*See* Pet'r Pet. for an Original Tax Appeal Ex. B. at 6 (citing IND. ADMIN. CODE tit. 45, r. 1.1-6-2 (1999).) This was in error; the regulation in effect at the time Smurfit made its sale in 1988 (i.e., 45 IAC 1-1-51) should have been applied.

[2] Neither party disputes the fact that, during the year at issue, Smurfit had a "business situs" in Indiana at both its New Castle and Aurora manufacturing plants.

[3] Indeed, the work was readily transferred to CCA's own plants in Ohio, Kentucky, and elsewhere in Indiana, for completion.

CONCLUSION

For the reasons stated above, the Court finds that the income Smurfit has derived from the sale of its intangibles is not income "derived from sources within Indiana." Accordingly, the income is not subject to Indiana's gross income tax.[4] Consequently, the Court GRANTS summary judgment in favor of Smurfit and AGAINST the Department.

SO ORDERED this 8th day of September, 2005.

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Thomas G. Fisher, Judge
Indiana Tax Court

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[4] As a result of this decision, the Court does not need to reach the question whether Smurfit's gross income is "taxable gross income" under Indiana Code § 6-2.1-1-13.