



This Week in State Tax (TWIST)

January 21, 2025



Illinois: Circuit Court Disallows 80/20 Treatment for Corporate Subsidiary

On January 9, 2025, an Illinois circuit court judge upheld an Illinois Tax Tribunal decision denying the exclusion of a member of the unitary group as an 80/20 company. Immediately prior to the tax years at issue (2016-2017), the taxpayer, a manufacturer of food and beverage products, underwent a reorganization in which certain foreign activities, including the secondment of expatriate employees to foreign host companies, were centralized under a single disregarded entity. This entity was then placed below the taxpayer's domestic subsidiary in the organizational structure. After the change, employees of the disregarded entity were treated as foreign employees whose compensation was included in foreign payroll when determining whether the domestic subsidiary would be considered an 80/20 corporation. Under Illinois law, a unitary business group may exclude the income of a member whose business activity outside the U.S. , as measured by its property and payroll factors, exceeds 80 percent of its total business activity. On audit, the Illinois Department of Revenue (Department) disallowed the 80/20 treatment and required the inclusion of the subsidiary in the taxpayer's unitary group. After the Tax Tribunal upheld the Department's determination, the taxpayer appealed to the circuit court.

Consistent with the Tax Tribunal, the circuit court held that the payroll of the expatriate personnel which was charged to the disregarded entity should not have been incorporated into the payroll calculations of the domestic subsidiary to determine whether the domestic subsidiary was an 80/20 company. The court further held that the disregarded entity was formed for the purpose of tax benefits and that expatriate compensation charged to the disregarded entity did not reflect substantive foreign business activities conducted by the domestic subsidiary (which derived the bulk of its revenue from the purchase and resale of products in the United States). The taxpayer may appeal the matter within 30 days of the order. Please contact [Bradley Wilhelmson](#) with questions about *Pepsico, Inc. v. Department of Revenue*.

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