**myStateTaxOffice**
A Washington National Tax Services (WNTS) Publication

**July 27, 2012**

# *Indiana Supreme Court overrules Miller Brewing and sources sales based on a destination rule*



*Authored by: Michael Santoro*

## *In brief*

Goods picked up by a common carrier at an Ohio location and delivered to a customer's Indiana location were Indiana sales because they were ultimately delivered to an Indiana customer.

## *In detail*

Miller Brewing Company, a Wisconsin corporation that produced malt beverage products, engaged in the following transaction at issue: (1) an Indiana customer placed a product order with Miller in Milwaukee; (2) Miller or the customer arranged for the product to be picked up at an Ohio brewery; and (3) a common carrier picked up the product and delivered it to the Indiana customer.

For its 1997 to 1999 tax years, Miller sourced these carrier pick-up sales outside of Indiana. Pursuant to an audit, the Indiana Department of Revenue asserted that such sales were Indiana sales. [*Indiana Department of Revenue v. Miller Brewing Company*, Indiana Supreme Court, No. 49S10-1203-TA-136, July 26, 12]

pwc

### *Sales factor provision is unambiguous, ultimate deliveries to Indiana customers are included in the Indiana sales factor numerator*

The Indiana Supreme Court ruled: "[A] sale 'of tangible personal property' is deemed to have taken place in Indiana if 'the property is delivered or shipped to a purchaser that is within Indiana, other than the United States government.' Ind. Code § 6-3-2-2(e). This is true *'[r]egardless of . . . other conditions of the sale.*'" [emphasis in the Court's opinion].

Note that the court cited and interpreted the current version of Ind. Code § 6-3-2-2(e), applicable for tax years after 2006, rather than referring to the statute as it existed during the 1997 to 1999 years at issue.

The Court found the statute unambiguously applied to products "delivered or shipped" to Indiana purchasers, regardless if the method of delivery was through Miller or through a third-party carrier. Due to the unambiguous interpretation of the statute, the Court did not entertain administrative interpretations of the statute, including an Indiana regulatory example providing that a sale is not an Indiana sale if the purchaser picks up the goods at an out-of-state location and brings them back into Indiana in his own conveyance. Miller argued that "in his own conveyance" referred to vehicles owned by common carriers hired by either the purchaser or the seller. The Court disagreed, stating that such an interpretation was "plainly inconsistent" with the statute and therefore not applicable.

## *Actions to consider*

To the extent a taxpayer failed to apply a destination rule for open tax years, a refund opportunity may exist for goods picked up by a common carrier in Indiana and ultimately delivered to locations outside of Indiana.

The Court seems to leave open the question as to whether the regulatory example is still valid as applied to customer pick-ups in customer owned vehicles. As a result, it remains to be seen whether a refund opportunity exists regarding pick-ups in customer owned vehicles.

## *Let's talk*

If you have questions about the *Miller Brewing* decision, please contact one of the following individuals:

Michael Ralston
Director
(317) 940-7301
michael.ralston@us.pwc.com

Richard Boer
Director
(317) 940-7302
richard.e.boer@us.pwc.com