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Insuring risks located in Indiana does not equate to "doing business" in Indiana for purposes of being subject to the Indiana premiums tax in lieu of the corporate income tax

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Indiana imposes both a corporate income tax and an insurance premiums tax. Under the premiums tax, foreign (not organized in Indiana) insurance companies that are "doing business" in Indiana are subject to the premiums tax in lieu of the corporate income tax. Foreign reinsurance companies that engaged in transactions outside of Indiana were not subject to the premiums tax despite the fact that the underlying risks were located in the state. [[*Indiana Dept. of Revenue v. United Parcel Service, Inc.*](#), Ind. Supreme Court, Dkt. No. 49S10-11070TA-417 (6/21/12)]

In detail

United Parcel Service, Inc. ("UPS") traditionally filed a world-wide combined Indiana corporate income tax return with its affiliates. Two of its affiliates are reinsurance companies: UPINSCO and UPS Re ("Reinsurance Affiliates"). During the 2000 and 2001 tax years, the Reinsurance Companies reinsured, or indemnified, independent primary insurers ("Primary Insurers") for worker's compensation insurance and



liability insurance for damaged packages for UPS operations nationwide, including in Indiana.

On its 2000 and 2001 corporate income tax returns, UPS sought to exclude the income of the Reinsurance Affiliates, claiming that they were subject to the premiums tax and therefore excluded from the corporate income tax. UPS asserted that the Reinsurance Affiliates were "doing business" in Indiana (and therefore subject to the premiums tax) for reasons including that they insured Indiana property. In the action before the Indiana Tax Court, the court granted summary judgment in favor of UPS.

On appeal to the Indiana Supreme Court, the court noted that all foreign insurance companies must, at the very least, show they are "doing business" within Indiana before such companies are entitled to an exemption from the corporate income tax. Finding guidance in a 1917 Indiana Appellate Court decision, the *UPS* court observed that the premiums tax is imposed only on business done within the territorial boundaries of Indiana and that reinsurance transactions occurring outside of Indiana, even if they involve primary risks located in Indiana, do not amount to business done in Indiana.

The court held that the following facts presented by UPS did not support a finding that the Reinsurance Affiliates were doing business in Indiana:

- All payments under the UPINSCO agreements are made to Boston, Massachusetts.
- UPINSCO's address is listed as St. Croix, U.S. Virgin Islands.
- UPINSCO agreement payments are to be made via drafts on a letter of credit issued by an Italian bank, as presented to the bank's New York office.
- The UPS Re agreement provides that any notice or other communication shall be made to UPS Re in Hamilton, Bermuda and Atlanta, Georgia and to the Primary Insurer in New York, New York; and
- The reinsurance agreements contain Massachusetts and New York choice of venue, arbitration, and choice of law provisions; require service to UPINSCO in St. Croix and Atlanta, Georgia; and require service to the Primary Insurer in Massachusetts.

As a result, the Reinsurance Companies were not "doing business" under the premiums tax and therefore not entitled to an exemption from the corporate income tax. The court reversed the Tax Court's grant of summary judgment and remanded the case back to the Tax Court for further proceedings.

Actions to think about

The Supreme Court's opinion is somewhat confusing unless you first read the Tax Court's opinion in this case. In Indiana, as in many other states, there has been a question as to whether captive insurance companies must be included in a combined corporate income tax return even though they could never be subject to the corporate income tax themselves due to the requirement that they pay the premiums tax in lieu

of the corporate income tax. The Tax Court held that a foreign insurance company is "subject to" the premiums tax regardless as to whether it pays the tax since it can never be directly subjected to the corporate income tax. The Supreme Court's holding is a bit more nuanced because it does not come out and say that a foreign insurance company has to actually pay the premiums tax in order to be subject to the tax, but that it must engage in some activity that would cause them to be liable for the tax. Insurance companies can look to this decision to gain some guidance regarding the activities necessary to qualify under the Indiana premiums tax "doing business" standard.

Let's talk

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