

## Income/Franchise:

### Wisconsin: Receipts from Company's Sale of Credits Deemed Characterized as Apportionable Income

*Case No. 19-1-227*, Wis. Tax App. Comm. (11/29/21). In a ruling involving whether receipts from a vehicle distribution company's sale of certain Wisconsin environmental credits should have been included as apportionable income on the combined Wisconsin corporate franchise tax return of the company's unitary group for the 2015 tax year at issue, rather than non-business income allocable outside Wisconsin, the Wisconsin Tax Appeals Commission (Commission) held that the credits are not unrelated to the company's unitary business and in fact are operational rather than serve an investment function. Therefore, the income the company earns from selling such excess credits is apportionable. Furthermore, the Commission reasoned that the sales of such credits is an ongoing activity for the company which "requires the cooperation and coordination of company unitary resources." That is, under the facts, the unitary enterprise generates the credits, allows for public posting of the credits it determines are not useful, negotiates purchase agreements, reviews the legalities of those agreements, provides executive approvals, and works with regulators to authorize transferring the credits away from the unitary business. In this respect, the Commission concluded that the company's income from the credit sales activity is sufficiently analogous to income derived from the sale of by-products, which is expressly presumed unitary and apportionable under state law. Please contact us with any questions.

**URL:** <https://taxappeals.wi.gov/Documents/Decisions/2003-2021/A-F/American%20Honda%202021-11%20RO.pdf>

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