

## Income/Franchise:

### Indiana: Affiliated Special Purpose Entity Not Includable on Return Because it Lacked Nexus

*Final Order Denying Refund 02-20221088*, Ind. Dept. of Rev. (2/7/23). The Indiana Department of Revenue (Department) denied a company in the business of providing communications services an Indiana corporate income tax refund, holding that one of its affiliates (“Holdings”) – namely, a special purpose entity formed to provide financing to certain partnerships and permit them to purchase communications licenses from the federal government and thereafter sell or lease those licenses to locations across the country, including Indiana – may *not* be included in its amended Indiana consolidated tax returns for the 2017 and 2018 tax years at issue because the company failed to show Holdings conducted business within Indiana by virtue of any continuing ownership interest in the licenses. In doing so, the Department reasoned that while Holdings has an ownership interest in the partnerships and the partnerships make loan payments to Holdings, it is unable to agree that the company clearly established that Holdings is conducting in-state business activities. According to the Department, although there is an indirect financial relationship between Holdings, the licenses, the license fees, the loan arrangement, and Holdings’ loan repayment income, it is “unable to tie the licenses income to Holdings’ Indiana activities or the conduct of business within the state.” The Department noted that Holdings has no Indiana employees and that members of Holdings’ staff do *not*:

**URL:** <http://iac.iga.in.gov/iac/20230419-IR-045230198NRA.xml.pdf>

1. Visit Indiana,
2. Provide assistance to Indiana licensees, or
3. Provide technical assistance to the licensees.

Furthermore, Holdings “does not conduct any of the day-to-day activities which one would normally expect from a company ‘doing business’ in this state.” Please contact us with any questions.

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