

This Week in State Tax (TWIST) – November 2, 2009

Illinois: ALJ Holds Revenue Miles from Interstate Flow-Through Miles Included in Illinois Factor

An Illinois Administrative Law Judge (ALJ) has recently addressed whether miles traveled by natural gas transported in pipelines through Illinois constitute revenue miles in the state that are includible in the numerator of a taxpayer's Illinois apportionment factor when the natural gas at issue neither originates nor terminates in Illinois. The taxpayers, an affiliated group of corporations, were in the business of furnishing gas pipeline transportation services. As such, they were required to apportion their business income using a special formula based on revenue miles in Illinois over revenue miles everywhere. The key issue before the ALJ was whether "revenue miles in Illinois" included Illinois revenue miles attributable to gas transported by pipeline through Illinois that neither originated nor terminated in the state (i.e., interstate flow-through miles).

A previous Illinois appellate court holding, *Northwest Airlines*, ruled that transportation miles of a passenger airline related to flights over Illinois that neither originated nor terminated in the state were not revenue miles includable in the apportionment formula. The taxpayers argued that, based on this holding, interstate flow-through miles should be excluded from the Illinois revenue miles apportionment factor numerator. The ALJ rejected this argument because in *Northwest Airlines* there was no evidence of physical or economic contact between the state and flyovers that neither originated nor terminated in Illinois. In contrast, the ALJ found ample evidence of physical and economic contacts between Illinois and the flow-through miles, as the taxpayers had to act affirmatively in using their extensive in-state infrastructure to move the gas through Illinois. In addition, the taxpayers challenged the inclusion of the interstate flow-through miles on Commerce Clause grounds. However, the ALJ rejected all the taxpayer's constitutional challenges, including its "vigorous" assertion that including the interstate flow-through miles resulted in a tax that was unfairly apportioned to Illinois. Please contact Brian Kuler at 312-665-5110 with additional questions on *Department of Revenue v. ABC Pipeline Co., et al.*

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