

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

██████████

Petitioner.

DOCKET NO. 1-542-722-560

DECISION

██████████ (Petitioner) protested the Notice of Deficiency Determination (Notice) dated December 14, 2022, issued by the Income Tax Audit Bureau (Bureau). Petitioner disagreed with the Bureau's adjustments to their apportionment factor. The Idaho State Tax Commission (Tax Commission) reviewed the matter and for the reasons stated below modifies the Notice.

BACKGROUND

Petitioner is a corporate taxpayer, a multinational mass media and entertainment conglomerate, with their principal place of business in New York City, New York¹. The Multistate Tax Commission (MTC) conducted an audit of Petitioner's Idaho corporation income tax return for a short period, beginning on June 15, 2018, ending on December 31, 2018². Upon completion of the audit, the MTC provided their findings to the Tax Commission, recommending the Bureau adjust Petitioner's apportionable income and apportionment factor.

The Bureau adjusted Petitioner's apportionable income and apportionment factor as the MTC recommended and sent Petitioner a Notice³. Petitioner protested the Notice, disagreeing with the Bureau's adjustments to dividend received deduction, foreign/deemed dividend exclusion, and

¹ ██████████ acquired ██████████ and its subsidiaries in June 2018. However, ██████████ business operation was not integrated with ██████████ upon the acquisition. Therefore, ██████████ a subsidiary of ██████████ filed a combined Idaho return including its unitary members for the period starting with the acquisition date to the end of 2018.

² Idaho is a compact member of the MTC and authorized them to review Petitioner's Idaho returns.

³ Petitioner did not protest the apportionable income adjustment; therefore, the Tax Commission will not address it further in this decision.

sales numerator. Petitioner's explanation in the protest warranted modifications to the dividend received deduction and foreign/deemed dividend exclusion. As a result of the Bureau's modifications, the dividend received deduction and foreign/deemed dividend exclusion are no longer in dispute; therefore, the Tax Commission will not discuss these issues in this decision. As for the sales numerator, Petitioner maintained their objection to the Bureau's adjustment based on the MTC Special Rule: Television and Radio Broadcasting (broadcasting rule)⁴. The Bureau acknowledged Petitioner's protest and sent the matter to the Tax Commission's Appeals Unit (Appeals) for administrative review.

Appeals reviewed the case and sent Petitioner a letter explaining the options available for redetermining a Notice. Petitioner responded and requested an informal hearing, which was held on February 27, 2025. After the hearing, Petitioner provided clarifications of their business activities as requested by Appeals. Having reviewed the file, the Tax Commission hereby issues its final decision.

ISSUES

The issue on appeal is the apportionment factor, specifically the sales numerator of Petitioner's subsidiaries that the MTC determined to be "broadcasters" based on the definitions provided in the broadcasting rule. The Tax Commission reviews whether these subsidiaries met the MTC's "broadcaster" definition, and if so, whether the sales numerator the MTC calculated, using the U.S. Census data, fairly represents these subsidiaries' business activities in Idaho. Furthermore, the Tax Commission reviews whether these subsidiaries are subject to Idaho income taxation as they did not have a physical presence in Idaho.

⁴ MTC Regulation Article IV. Section 18 (h)

LAW AND ANALYSIS

Definition of broadcaster

Idaho adopted the MTC Special Rule: Television and Radio Broadcasting (broadcasting rule) as amended on April 25, 1996, for taxable years beginning on or after January 1, 1995⁵. The broadcasting rule section (1) says in general that,

When a person in the business of broadcasting film or radio programming, whether through the public airwaves, **by cable**, direct or indirect satellite transmission or **any other means of communication**, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant of Article IV... (emphasis added)

And, under section (3) (vii) defines,

“Telecast” or “**broadcast**” (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radio waves or microwaves or **by wires, lines, coaxial cables**, wave guides, **fiber optics**, satellite transmissions directly or indirectly to viewers and listeners **or by any other means of communications**. (emphasis added)

The MTC’s definition of “broadcast” includes, but is not limited to, the transmission of television programming by coaxial cables and fiber optics cables or by any other means of communications through a network. When the person in the business of transmitting television programming by cable through a network has income from sources both within and without Idaho, the amount of business income from sources within this state should be determined based on the audience factor as provided in the broadcasting rule.

In the present case, Petitioner argued that they are not broadcasters. It is true that Petitioner, as a single entity, may not be a broadcaster; however, their subsidiaries are. Petitioner’s

⁵ IDAPA 35.01.01.580.01.e., Idaho Code section 63-3027(s).

under review. Therefore, the Tax Commission modifies the Notice to remove the sales numerator calculated by the MTC for these two subsidiaries.

Sales sourcing based on the MTC broadcasting rule

The broadcasting rule, section (4)(iv) The Sales Factor, B. Sales Factor Numerator. 2.

Gross receipts, state in a pertinent part,

... The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience. Such **audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics**, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in the state... (emphasis added)

The MTC estimated the sales numerator based on the 2018 U.S. population statistics published by the U.S. Census Bureau⁶. The MTC applied the Idaho population percentage to all the broadcaster subsidiaries. It is questionable whether the MTC's estimates based on the U.S. Census data would fairly represent the broadcaster subsidiaries' sales numerators because not all Idahoans would watch or subscribe to television programs provided by Petitioner's broadcaster subsidiaries.

During administrative review, Petitioner suggested the Tax Commission use a "commercial domicile percentage (%)" to determine the sales numerator for their broadcaster subsidiaries. Petitioner explained that the commercial domicile % is based on commercial domicile⁷ of their customers who are television service distributors, e.g., Comcast and advertisers,

⁶ The MTC considered estimating the sales numerator based on the Nielsen rating reports; however, they did not as the Nielsen rating reports were not available. Nielsen rating reports, developed by Nielsen Media Research who measures media audiences, including television, radio, theatre, films and newspapers. Nielsen rating reports are audience measurement systems that determine the size and composition of television audiences in the U.S., providing insights into viewership for television programs and streaming content.

⁷ Idaho Code section 63-3027(a)(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

e.g., Coca Cola. The example Petitioner provided as their explanation of the commercial domicile % is that revenue from advertising placed on [REDACTED] by the [REDACTED] [REDACTED] [REDACTED] (one of Petitioner's advertisers during the period at issue) would be sourced to Idaho because the commercial domicile of the [REDACTED] [REDACTED] [REDACTED] is Idaho. However, the broadcasting rule requires a broadcaster to use the audience factor for television programming which should be determined by the ratio of in-state viewing audience to total viewing audience, instead of the commercial domicile of the broadcasters' customers. The Tax Commission found that the commercial domicile % is not in line with the broadcasting rule nor is it a fair representation of Petitioner's business activities in Idaho.

To determine the audience factor, Appeals requested and Petitioner provided the number of subscribers in Idaho and all other states, calculating a percentage of subscribers in Idaho (Idaho subscriber percentage) for each broadcaster subsidiary. Petitioner's subscriber percentage varies in each state and indicates some correlations among the popularity of television programs, number of subscribers, and population in each state. Based on Petitioner's Idaho subscriber percentage, Appeals calculated the sales numerators for their broadcaster subsidiaries. The Tax Commission found that the sales numerator based on the Idaho subscriber percentage is in line with the audience factor required by the broadcasting rule and is a fair representation of their broadcaster subsidiaries' business activities in Idaho. The Tax Commission finds that the Notice needs to be modified based on the sales numerator calculated by the Idaho subscriber percentage. However, before reaching a final determination regarding the sales numerator, the Tax Commission will review whether Petitioner must have physical presence or nexus in Idaho to be subject to Idaho income taxation.

Physical presence or nexus

Petitioner argued that, since their broadcaster subsidiaries did not have properties (i.e., buildings, land, machinery, equipment, etc.) and/or employees in Idaho, their sales are not subject to Idaho income taxation. It is true that Petitioner did not have a physical presence or nexus in Idaho during the review period. Physical presence is a requirement to source the sale of tangible personal property to Idaho; however, it is not for the sale of services. The standard apportionment for sourcing a sale of service is based on costs of performance⁸ for the year under review. When the standard apportionment method does not fairly represent a taxpayer's business activities, "...the state tax commission may require... the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income"⁹. The broadcasting rule is one of the apportionment methods the MTC recommended for specific industries, so-called special industry rules. Idaho adopted this rule because the standard apportionment method is not applicable to a taxpayer who is a broadcaster due to the unique nature of the broadcasting industry.

The broadcasting rule requires Petitioner source service revenues based on an audience factor, which is a percentage of in-state viewers over all states¹⁰ viewers of their television programs, instead of being based on Petitioner's physical presence in a state. Following this rule, Petitioner's broadcaster subsidiaries are subject to Idaho income taxation. Therefore, the Tax Commission agrees with the MTC's determination that Petitioner owned broadcaster subsidiaries; however, the Tax Commission modifies the Notice for the sales numerator based on the Idaho subscription percentage as previously discussed in this decision.

⁸ Idaho Code section 63-3027(r)

⁹ Idaho Code section 63-3027(s)(4).

¹⁰ The audience factor can be determined "either by reference to the books and records of the taxpayer or by reference to published rating statistics..."

CONCLUSION

The Tax Commission found that all, except for two, of the subsidiaries adjusted by the MTC, are broadcasters as defined by the broadcasting rule. The broadcasting rule requires Petitioner to source their service revenues based on the audience factor, which is the Idaho subscriber percentage in this case, regardless of their physical presence. To fairly reflect the broadcaster subsidiaries' business activities in Idaho, the Tax Commission modifies their sales numerators based on the Idaho subscriber percentage. The Notice added interest to the tax due amount, and the Tax Commission finds the addition appropriate in accordance with Idaho Code section 63-3045.

THEREFORE, the Tax Commission MODIFIES the Notice dated August 15, 2024, directed to Petitioner.

IT IS ORDERED that Petitioner pay the following tax and interest. Interest is calculated in accordance with Idaho Code section 63-3045.

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2018	\$46,326	\$8,835	\$55,161

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2025.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2025,
a copy of the within and foregoing DECISION was served by sending the same by United States
mail, postage prepaid, in an envelope addressed to:

Receipt No.

[REDACTED]

[REDACTED]