4/26/99

MCI INTERNATIONAL TELECOMMUNICATIONS CORP.	*	IN THE
	*	MARYLAND TAX COURT
V.	*	
COMPTROLLER OF THE TREASURY	*	NO. C-96-0028-01

* * * * * * * * * * * *

MEMORANDUM OF GROUNDS FOR DECISION

Petitioner, MCI International Telecommunications, Inc. (hereinafter "MCIIT" or "Petitioner"), appeals an assessment issued by the Comptroller of the Treasury (hereinafter "Respondent") for Maryland income tax for the tax years ended March 31, 1991 through March 31, 1993. Taxes assessed totaled $2,2765,518 for the three years, plus penalties and interest, for total assessments of $4,425,859. At hearings, testimony was taken, documents presented, and motions and memorandum were filed.

The Parties

Before any recitation of the facts as presented, an explanation of the parties and affiliations is necessary.[1] Petitioner, MCIIT, describes itself as a wholesaler of international telecommunications services. It is part of an affiliated group of corporations collectively known as MCI. The parent of the affiliated group is MCI Communications Corporation ("MCIC"). MCIC has two subsidiaries, reflecting the two areas of business in telecommunications. MCI Telecommunications Corporation ("MCIT") is the domestic communications arm of MCIC. MCIT

[1] All stated facts pertain to the time period of the assessment, unless specified otherwise.

operates throughout the United States, including Maryland. This entity is a long distance telephone service provider for U.S. domestic customers, familiar to many through their advertising.

MCI International, Inc. ("MCII") is the international business arm of MCIC. Its business is the provision of international telecommunications to its affiliates and other customers. It is located in New York. MCII is the parent corporation of both Petitioner, MCIIT, which handles international voice communication and Western Union International. Inc., which provides mostly data transmissions.

Thus, in the family scheme, MCIIT, the assessed entity, can be labeled as the child corporation to MCII, the nephew corporation to MCIT and the grandchild entity to MCIC.[2] The Respondent has assessed both Petitioner and its uncle corporation, MCIT, for income taxes.

Summary of Pertinent Facts

MCIIT provides international voice service to its customers. Its existence was mandated by the need to have a single entity operating in an environment heavily regulated by the federal government through the Federal Communications Commission (FCC). In addition, the separate international company was a completely different type of business than the domestic voice transmission business. Different expertise, equipment, customers and regulations applied to international communications.

Initially, before MCIIT could begin any voice service between countries, operating agreements had to be reached with each country it wished to provide service. These agreements were negotiated, reviewed and executed by its parent MCII. The domestic carrier, MCIT, had nothing to do with the preparation of these agreements. Once signed and filed, the international entities had access to the respective countries.

MCII, the parent, also assisted MCIIT in the gaining of access to the equipment necessary to complete an international telephone call; namely, undersea cables, interconnecting cables, computer systems to track minutes and calls and satellite facilities. The cable is owned by an consortium of international telecommunications companies due to the expense of maintaining such a facility. MCIIT pays MCII a management fee in exchange for its services.

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[2]The corporate structure, in its most simplistic form, is best provided by Petitioner's Exhibit 4.

An international telephone call completed by the Petitioner starts at a mainland point. If it is an inbound call (to the United States), the call typically originates with the customer of a foreign telephone company (referred to in testimony as a "PTT"). The foreign PTT carries the call over the afore-mentioned submerged ocean cable. The foreign PTT bill their customers in their countries and then pay MCIIT a service fee. At the midpoint on the ocean cable, MCIIT picks up the call and transmits it to a cablehead where the ocean cable reaches the shoreline. MCIIT pays a service fee to its parent, MCII, for the capacity to carry calls on the cable. MCIIT then carries the call to a "gateway switch". This switch is owned by one of the domestic long-distance carriers ("LDC"), i.e. AT&T, Sprint, or MCIT. The gateway switch is not located in Maryland. MCIIT terminates the call at the gateway switch, where the LDC picks up the call and transmits it over its domestic long distance network to the local exchange carrier (i.e. Bell Atlantic), who transmits it to their ultimate destination. MCIIT pays the LDC a service fee for carrying the calls on its network.

An outbound call would operate in the reverse fashion. The LDC would send the call to its gateway switch, where MCIIT picks it up and transfers it to the ocean midpoint to the PTT, who would complete the call on the foreign side of the transaction. In this instance, the LDC would pay MCIIT a service fee for its service in completing the international call. MCIIT would pay the PTT a service fee for taking its call and completing it.

It is the treatment of the service and management fees paid and received by MCIIT that has generated this appeal. Petitioner , in 1991, reported for the first time in its Maryland income tax returns, no Maryland payroll expenses and nominal property ownership. When combined with the substantially increased revenue reported, the Respondent asserted grounds for an audit. At hearing before this Court, testimony established that payroll expenses were included in the management fee paid by MCIIT to MCII, its parent. That fee also paid for other services MCII provided; i.e. negotiations, accounting, procurement, data processing, etc. The fee was determined through an allocation of expenses by MCII to its subsidiaries. There was no specific agreement between the entities in defining the exact amount of the fee. In 1991, the fee paid by MCIIT to MCII was $56 million dollars.

As for the property, repeatedly the testimony indicated that MCIIT owned no property in Maryland. The cables and satellites were owned by other entities to which MCIIT paid a rent, then capitalized to determine their value for tax purposes. The rental expense was a fixed allocated

amount, not based on actual usage. No specific rental agreement between the entities were introduced. The gateway switch to which international calls were either picked up or handed off were owned by the domestic long distance carriers, MCIT being one of them. They were not rented by Petitioner. Petitioner paid those owners a fee based on actual usage of the facility. None of the gateway switches were located in Maryland.

The filing of the 1991 tax returns triggered an audit and an assessment by the Respondent against both MCIIT, the Petitioner, and its uncle MCIT. The Respondent determined that the Petitioner was not a substantial entity and its existence was based solely as a means by which the in-state affiliate, MCIT, could divert taxable income to an out-of-state entity through the payment of service fees paid to MCIIT for transmissions it handled. Since that entity has no property, payroll or sales in Maryland, the income generated by the service fees from the PTT's and the LDC's could not be apportioned to Maryland.

Relying primarily on case law, the Respondent used the income reported on the Petitioner's tax returns, applied the apportionment formula as derived from information on the domestic long distance corporation's (MCIT) returns and issued assessments against MCIIT. MCIIT appealed those assessments and a hearing was held by the Respondent. The hearing officer who heard the appeal was also, it was later discovered, actively involved in the audit of the Petitioner. He subsequently affirmed the assessments and the Petitioner filed a timely appeal with this Court.

Issues Presented

I. Nexus.

The Respondent can assess a tax on the income of an out-of-state entity if that entity has nexus with the State of Maryland. Petitioner presents two challenges to Respondent's assumption that nexus exists with Maryland.

First, Petitioner contends that neither Maryland statutes or case law impose nexus in order for Respondent to subject it to Maryland Income tax. It claims that it does not conduct any trade or business in Maryland and therefore, pursuant to Maryland law, its income cannot be subject to tax.

Petitioner next asserts that the Respondent's attempt to tax its income violates the Due Process Clause and the Commerce Clause of the United States Constitution. Specifically, Petitioner

contends that the “minimum contacts” necessary for an entity to meet Due Process nexus with a taxing state does not exist here. As for the Commerce Clause, Petitioner argues that is involved with no activity having “substantial nexus” with the taxing state and that since it has no physical presence with Maryland, Respondent’s assessment violates the principles stated by the U.S. Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

II. Apportionment.

Even if this Court finds that sufficient nexus exists for the imposition of income tax, Petitioner argues that the law mandates that the proper apportionment formula to be used in determining the amount of tax liability should be either one using the sales, property and payroll of the Petitioner itself or of its parent, MCII.

Petitioner claims that the application by the Respondent of the “uncle” corporation factor formula amounts to a change in policy of general application, the implementation of which requires either statutory or regulatory action, based on the decision in *CBS, Inc. v. Comptroller*, 319 Md. 687 (1990). Petitioner asserts that the lack of regulatory procedures violates the Maryland Administrative Procedures Act. In addition, Petitioner argues that the use of MCIT’s apportionment factor results in unconstitutional unfair apportionment, unrelated to Petitioner’s activities in Maryland.

III. Procedural Violations.

Petitioner asserts that the hearing officer’s active involvement in the original audit violates the Petitioner’s Fifth Amendment due process rights as well as the principles mandated by the Administrative Procedures Act. According to the Petitioner, the Respondent permitted pervasive influence by the hearing officer on the auditor of Petitioner’s records and therefore, any proceeding before that hearing officer was constitutionally suspect. Petitioner seeks dismissal of the assessments on those grounds.

Conclusions of Law

I. Nexus.

Maryland imposes a tax on the taxable income of a corporation defined as "its Maryland modified income as allocated to the State..." §10-301 of the Tax-General Article of the Annotated Code of Maryland.[3] Maryland modified income of a corporation is its federal taxable income, adjusted by the Maryland additions and subtractions, §10-304 through 10-308. The computation of the tax requires the corporation to allocate Maryland modified income "derived from or reasonably attributable to its trade or business in this State", §10-402(a). If the entity earns its income from in and out of the State, that income derived from instate business activities must be allocated to Maryland, §10-402(a)(1) & (2). If the corporation is unitary, then a 3-factor apportionment formula is applied to its income in order to determine Maryland taxable income of that corporation, §10-402(c). Under subsection (d) of §10-402, the Respondent may alter the allocation and apportionment of a corporation's income "to reflect clearly the income allocable to Maryland". Each corporate member of an affiliated group, even if unitary, is required to file a separate tax return to the Respondent, §10-811.

Absent the fact that a unitary relationship exists between the Petitioner and MCIT, the assessment would not have been imposed upon Petitioner's income. If the Petitioner was not part of a unitary group, the evidence indicates that Petitioner does not conduct any trade or business in this State. Petitioner either picks up outbound calls from or drops off foreign inbound calls to the LDC outside of Maryland at the gateway switch. It is this transporting of voice transmissions that generates the Petitioner's income. Since all of its income producing activity occurs outside of Maryland, pursuant to §10-402, that income is outside of Maryland's taxing jurisdiction. Despite the Respondent's attempt in his memorandum to label the entire MCI corporate group as being the Petitioner in this assessment, the statutes warrant the consideration of each separate affiliate when determining a Maryland presence.

The parties both agree that Petitioner is a part of a unitary group of entities. Accordingly, relying on precedent established in two Maryland Court decisions, *Comptroller of the Treasury v. Armco Export Sales Corp.*, 82 Md. App. 429 (1990) and *Comptroller of the Treasury v. Atlantic Supply Co.*, 294 Md. 213 (1982), the Respondent asserted nexus over Petitioner based on the in-

[3]All future statutory references shall be of the Tax-General Article, unless otherwise noted.

state activity of an affiliate, MCIT. Respondent first determined that Petitioner lacked "substantial economic substance", labeling Petitioner as a "phantom" corporation. As such, Respondent determined that the cases cited permit the attribution of "nexus and apportionment factors of the company or companies actually engaging in any real activity to the phantom company", Notice of Final Determination (Petitioner's Exhibit # 63).

We disagree with the Respondent's nexus attribution to Petitioner based on the *Armco* and *Atlantic Supply* decisions. Fundamental in both Court decisions is the determination that the taxpaying entity was a shell or phantom corporation with no economic substance. In *Armco,* the Court was faced with a statutorily created business organization known as a Domestic International Sales Corporation or DISC. The Court characterized the DISC as a "phantom book entry corporation created under federal tax laws...". In expounding on the phantom nature of a DISC, the Court noted that the DISC performed "no activity..to earn the income" *Armco*, *supra*, at 431; that "none of the DISC's had any tangible assets or employees anywhere; and that the DISC "can only conduct its activity and do business through branches of its unitary affiliated parent", *supra* at 430,435. In addition, the Court concluded there was specific legislative intent to subject the DISC's to Maryland income taxation.

In *Atlantic Supply,* nexus was not an issue. The taxpayer was clearly doing business in Maryland. The Court's focus was the taxation of an affiliate created for the specific purpose of obtaining the favorable wholesale price from a major supplier, Coca-Cola, which its parent, Macke Company, as a retailer, could not acquire. Emphasis was placed on the fact that the employees of the out-of-state affiliates were authorized to, and did, act in the name of the taxpayer outside of the state. In addition, the Court noted that the taxpayer's business "could not function without the funds supplied by Macke-parent and without the Macke branches as captive customers." *Atlantic Supply*, supra at 223. The court concluded then that the taxpayer could apportion its income among the states in which it did business.

It is clear to this Court that the above holdings are limited in their scope. The entities involved lacked <u>any</u> economic substance,[4] thus earning their "phantom" status. Respondent's attempt to impose that status on corporations with substance is not justified through *Armco* and

[4] It is interesting to note that Respondent's hearing officer found that Petitioner had no "substantial" or "significant" economic substance. We find nothing in either statute or case law that imposes a "substantial" requirement and will not infer one here.

Atlantic Supply. Indeed, in this technologically advanced era, it is not practical as well. It is conceivable that, for legitimate business purposes, a seemingly insignificant affiliate (i.e. one employee and/or one computer) can exist which generates substantial income yet have little or no expense. To attribute nexus solely on the basis that there is reliance on Maryland affiliates for some or all of that income expands the limited holdings of *Armco* and *Atlantic Supply* and ignores the reality that they are separate non-phantom entities required to report their income separately.

In the instant case, Petitioner is not just a book entry corporation. The evidence clearly indicates that it performed activity (the transfer of inbound and outbound calls over international territory) that generated income. The revenues were earned from non-affiliated entities as well as MCIT. Petitioner has substantial property on its books and has incurred personnel expense through the payment of management fees to its parent, MCII. Unlike in *Armco*, Petitioner's corporate officers, operating territory, property, and employees are different from those of the in-state corporation, MCIT. Unlike *Atlantic Supply*, there was no evidence to indicate that MCIT employees were authorized to act in the name of Petitioner. The evidence indicated that Petitioner was not solely dependent on MCIT and that it could function as a stand-alone corporation and do business with the other LDC's. MCIT was not a captive customer of Petitioner.

Finally, unlike the specific provision enacted by the legislature regarding DISC's, the taxation of foreign corporations based on the transactions between them and their in-state affiliate has not been adopted by either statute or regulation. The rejection by a legislative committee of proposed regulations[5] and the subsequent introduction of legislation[6] to specifically provide for that taxation supports Petitioner's argument that legislative intent was lacking.

In short, contrary to the DISC in *Armco* and the in-state affiliate in *Atlantic Supply,* Petitioner is not a phantom corporation and therefore, nexus cannot be attributed to it for Maryland taxation purposes.

Having found no support for attributing nexus, the question then is whether the United States Constitution permits the imposition of nexus directly on the foreign affiliate. The limits on

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[5] 24 Md. Reg. 1294 (Aug. 29, 1997) and 24 Md. Reg. 1314 (Aug. 29, 1997)

[6] House Bill 682, General Assembly Regular Session 1998. The bill was withdrawn before being brought to a vote. Although this bill was presented subsequent to the hearing in the instant case, it is relevant to the issues involved.

the taxing powers of a state are found in the Due Process and Commerce Clauses of the Constitution. The Supreme Court reviewed the requirements of both Clauses in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

In *Quill*, the Court reiterated that the "Due Process Clause 'requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax,' and that the 'income attributed to the State for tax purposes must be rationally related to 'values connected with the taxing State'", *supra* at p.307, *citations omitted*. Overruling prior holdings, the Court determined that the minimum contacts necessary to establish the jurisdiction to tax does not require actual physical presence in the state, but can be found "if a foreign corporation purposefully avails itself of the benefits of an economic market in the forum State", *supra* at p. 307.

The Supreme Court's analysis of the Commerce Clause begins with the requirements as set forth in its decision in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). *Complete Auto* provides a four part test which must be satisfied in order for a tax to pass muster against a Commerce Clause challenge. A tax is sustained so long as the tax : "1) is applied to an activity with a substantial nexus with the taxing State, 2) is fairly apportioned, 3) does not discriminate against interstate commerce, and 4) is fairly related to the services provided by the State", *Complete Auto* at p. 279. In discussing the first prong of the test, the Supreme Court held that the "substantial nexus requirement is not, like due process' 'minimum contacts' requirement, a proxy for notice, but rather a means for limiting state burdens on interstate commerce. Accordingly...a corporation may have the 'minimum contacts' with a taxing State as required by the Due Process Clause, and yet lack the "substantial nexus' with that State as required by the Commerce Clause", *Quill* at p. 313. The Court reaffirmed the "bright-line" test it established in *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967), that a taxpayer must have a physical presence in the taxing state in order to satisfy the substantial nexus requirement of the Commerce Clause.

In addressing the stricter "substantial nexus" requirement, Petitioner argues that since it has no physical presence in Maryland, the attempt to tax its income is a Commerce Clause violation pursuant to *Quill*. Respondent contends that the *Quill* Court explicitly noted that the physical presence requirement applies to sales and use taxes only. Reliance is also placed on the *Armco* and *Atlantic Supply* decisions to support the application of an apportioned income tax to a corporation without any physical presence in Maryland.

The Respondent is correct in that the tax the *Quill* Court analyzed was a sales/use tax. The Court did note that "concerning other types of taxes we have not adopted a similar bright-line, physical presence requirement", 504 U.S. at p. 316. However, the Supreme Court also refused to restrict the rule to only sales and use taxes. "Although we have not, in our review of other types of taxes, articulated the same physical presence requirement that *Bellas Hess* established for sales and use taxes, that silence does not imply repudiation of the *Bellas Hess* rule", *supra* at p. 314. This lack of clarity on the parameters of the physical presence test has led to differing interpretations among the States as to what the Commerce Clause requires in relation to income-based taxes.

Absent apparent explicit direction, we hesitate to expand the *Quill* physical presence requirement to taxes other than sales and use. In so doing however, we note that "substantial nexus" with the taxing state is still required in order to pass constitutional muster. In the rulings of *Armco* and *Atlantic Supply*, due to the nature of the corporate phantoms , with no substance and therefore no presence anywhere, the normal nexus rules were ignored and the Courts found that nexus could be attributed based on the in-state presence and activity of an affiliate. The Commerce Clause was satisfied through the substantial nexus (the production and export of goods) of the in-state unitary affiliate.[7]

However, as stated above, the instant case does not present us with a phantom. Petitioner is an entity of substance with a presence somewhere and thus the normal nexus (versus nexus attribution) rules apply. The focus of the substantial nexus requirement is on the entity sought to be taxed, not its in-state affiliate.

Initially, we determined that if Petitioner were a non-unitary corporation, its lack of in-state activity would preclude the imposition of the tax. Its income producing activity all occurs outside of Maryland. Petitioner has no offices, employees, agents or property in Maryland. Its only Maryland contact is an affiliation with an entity with a Maryland presence. This affiliation is hardly enough to satisfy substantial nexus.

The fact that Petitioner is part of a unitary group does not alter the above facts nor magically increase its Maryland presence in order to meet Commerce Clause criteria for nexus. The mere presence of an in-state affiliate of a unitary group does not confer nexus on a non-phantom out-of-

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[7] Although the term "substantial nexus" was not used by the *Armco* Court, the *Complete Auto* Commerce Clause requirements had been established for thirteen years prior to the Armco decision.

state affiliate of the same group, *Chesapeake Industries, Inc. v. Comptroller*, 59 Md. App. 370 (1984). In the unitary taxation scheme, the foreign corporation's income and factors may be included in determining the tax liability of the in-state affiliate. However, without nexus, the foreign corporation does not become subject to the taxing jurisdiction.

The Respondent claims that the corporate structure present here allows for the diversion of income away from Maryland through the internal transactions of affiliated entities which have no overall impact on the income of the unitary group. While this may be true, all such transactions are not necessarily abusive and in any event, these are the consequences of requiring affiliated corporations to file and report income separately. The Maryland Courts have addressed the treatment of such transactions when dealing with phantom corporations. With non-phantom corporations, such as Petitioner, the nexus rules as reiterated in *Quill* must still be applied to each affiliate before the State can tax.

Accordingly, we find that the Respondent has failed to satisfy the substantial nexus requirement of the Commerce Clause and the imposition of income tax on Petitioner's income is unconstitutional.[8]

II. Apportionment.

Having found that the requisite nexus to warrant the imposition of income tax on Petitioner does not exist, the issue of which apportionment factor is appropriate becomes moot. As an entity of substance with no nexus to Maryland, there is no Maryland income to calculate.

Even if there were ties to Maryland, with an entity of substance rather than a phantom, the proper apportionment formula would utilize the sales, property and payroll of Petitioner itself. Only if Petitioner were a phantom would the principles of *Armco* and *Atlantic Supply* be applicable. In those cases, the Courts allowed the Respondent to employ the factor of the taxpayer's in-state parent and apply it to the phantom's income. With the present facts, i.e. no phantom, there is no authority for the use of the in-state affiliate's factors.

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[8] In light of our Commerce Clause ruling, it is unnecessary to address the Due Process issue presented by the Petitioner.

Finally, in anticipation of judicial review, we agree with the Petitioner in its argument that the Respondent's attempt to deviate from the traditional three-factor formula in the case of a entity of substance or its use of the factor of an "uncle" affiliate in the case of a phantom corporation violates the ruling in *CBS, Inc. v. Comptroller*, 319 Md. 687 (1990) and the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §§10-101 through 10-139. In *CBS*, the Maryland Court of Appeals held that a change in an agency's "policy of general application" which results in "materially modified or new standards" may be made by prospective rulemaking only, *CBS,* p. 699. The APA requires that a change or implementation of policy by a State agency must be promulgated by regulation and that regulation may only be promulgated prospectively.

Rather than a reflection of current policy, the Respondent's apportionment formula of Petitioner represented a change from its own stated policy[9] and that affirmed in *Armco* and *Atlantic Supply.* That change "materially modified" existing apportionment standards to the detriment of taxpayers which had relied on the Respondent's past pronouncements. No regulations were promulgated or legislation enacted to effect this change in policy. Further evidence that this was a change can be found by virtue of the Respondent's attempt to promulgate procurement regulations relating to payments made by a Maryland taxpayer for trademarks, tradenames or intangible property from a contractor to an out-of-state affiliated entity.[10] Although these Regulations deal with holding company situations and, therefore, are not directly on point with the present situation, they indicate that the Respondent determined that its expansion of *Armco* from applying only to DISC's was a change in policy that required the adoption of regulations. A review of the legislature's comments explaining their subsequent rejection demonstrated that the retroactive application of the Respondent 's policy was unacceptable.

III. Procedural Violation.

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[9]Corporate Income Administrative Release No. 2 (Petitioner's Exhibit No. 84)

[10]See Footnote n.5.

Similar to the apportionment issue, having found that the Petitioner has no tax liability, the issue of the behavior of the hearing officer in the audit process becomes moot. However, the unusual[11] situation presented warrants review.

Testimony, documents and deposition testimony establish that the audit of the Petitioner was initiated, guided and signed off on by the hearing officer designated by the Respondent to hold the informal hearing mandated by §13-508 of the Tax-General Article. Not surprisingly, the result of the hearing was not favorable to the Petitioner. Upon learning of the hearing officer's involvement, Petitioner filed a Motion to Dismiss the Assessment on the first day of the hearing before this Court to which Respondent filed a response.[12]

The substance of Petitioner's Motion is that the hearing officer's involvement in the audit violates both the Due Process Clause and the Administrative Procedures Act's right to a fair trial. Petitioner seeks dismissal contending that anything less would "in effect, condone the conduct of the audit...sanctioning the processes whereby hearing officer and auditor could engage in a secretive and undisclosed collaboration that effectively reduces the appeal process to a nullity" and make "a mockery of all administrative proceedings before the Comptroller." Petitioner's Memorandum in Support of Motion to Dismiss or Abate Assessment, p. 15.

Respondent argues that its procedures and hearings are not subject to due process and APA requirements. In the alternative, the Respondent disputes that dismissal is the proper remedy.

The case law and arguments Petitioner presents do not convince us that due process and APA independent review is required at the "informal" hearing established in §13-508. A similar informal process exists in the property tax area, where the initial review of an assessment is before the assessor who made the value determination. While Respondent's conduct, in terms of the appearance of fairness, may be improper and raises questions, there is no statutory prohibition and it does not merit the constitutional sanctions that Petitioner seeks.

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[11]This issue is one of first impression with this Court.

[12] Respondent insisted that a hearing on this Motion was necessary to allow him the opportunity to offer evidentiary support for his position. However, a hearing on any Motion is within the sole discretion of the Court. Respondent was repeatedly advised that evidence could be submitted during the presentation of his case in chief (submission of which was not onerous considering the time lapse between the days of hearing).

Conclusion

For the above reasons, we shall pass an Order reversing the assessments imposed on the Petitioner, MCIIT, by the Respondent for all of the tax years involved.