MANPOWER, INC.	*	IN THE
	*	MARYLAND TAX COURT
Petitioner	*	
	*	
v.	*	Appeal No. 13-IN-00-0121
	*	
COMPTROLLER OF THE TREASURY	*	
	*	
Respondent	*	

MEMORANDUM AND ORDER

In the present case, the Petitioner, Manpower, Inc. ("Manpower" or "Petitioner"), filed an appeal from a Notice of Final Determination affirming a corporate income tax assessment issued by the Respondent, Comptroller of the Treasury ("Comptroller" or "Respondent"), for the 1996 through 2003 tax/audit years. In 2010, Comptroller completed an audit of Manpower and issued a Notice of Assessment ("Assessment") to Manpower for the tax/audit years consisting of corporate income tax of $572,503.00, interest through June 15, 2010 of $735,441.00, and penalties of $143,126.00.

Although Manpower initially contested Maryland's jurisdiction to impose corporate income tax, Manpower subsequently filed Maryland corporate income tax returns for the audit years based on the income report on Manpower's federal income tax return. Manpower did not employ the three-factor apportionment formula set forth in the Maryland statutes and regulations. Instead, it employed an alternative formula which produced taxable income attributable to Maryland significantly less than the income its own operating companies that did pay taxes

("Maryland Operational Entities") reported as the royalty income paid to Manpower. Comptroller's assessments employed an apportionment formula approved by Maryland courts which starts with a corporation's royalty revenue received from the corporation's Maryland operating entities.

The primary initial question for consideration is whether the Comptroller fairly apportioned income to Manpower's Maryland-related income producing activities.

The facts and exhibits have been stipulated to by the parties. Manpower claims that it is a human-resources staffing service provider with economic substance as a separate business entity. However, the facts and the audit by the Comptroller show that Manpower received royalty payments in the amount of $217,381,495.00 from its Maryland Operational Entities for the use of the Manpower System. Manpower was the owner of the intellectual property, including trademarks, trade names, and other intangible and intellectual property, including copyrights, design patents, trade secrets, systems and procedures, all used in connection with the provision of temporary help services. The Maryland Manpower Operational Entities that paid royalties included: Manpower International, Inc., Transpersonal, Inc., and Manpower Professionals, Inc.

The stipulated facts do suggest that Manpower generates millions of dollars each year from providing direct human resources and staffing services and paid salary and wage expenses. Although Manpower is not a personal holding company under federal law, Manpower owns sufficient voting stock in the Manpower Operational Entities to control those companies' policies and management. Manpower provides corporate oversight to all of its Manpower entities through independently owned franchise offices by developing and implementing the overall operating strategy. Licensing agreements allow Manpower entities the right to use the Manpower system owned by Manpower. Manpower, in exchange, receives a royalty fee based on a percentage of sales for the use of the Manpower system.

Manpower Operational Entities deducted operational expenses in their tax returns for home office reimbursements or home office expenses which were paid to Manpower. The operational expenses were for legal support, marketing, staff management and training, business consulting, access to group health and business insurance, customer invoicing, payroll processing, cash management, and other administrative services.

As a result of Manpower's initial failure to file returns for the years in question, the Comptroller was required to determine Manpower's income attributed to Maryland. After reviewing the returns from the Maryland Operational Entities and verifying the proforma numbers, the Comptroller properly determined that using the three-factor formula set forth under Maryland statutory law would not reflect actual income attributable to Maryland. The Comptroller employed an apportionment formula that only captured the expenses reported by the Maryland Operational Entities which simultaneously constituted income for Manpower. The Court finds that the Comptroller's apportionment formula fairly attributes income to Manpower's Maryland-related income-producing activities.

The Comptroller assessed Manpower for income tax attributable to Maryland using the same exact apportionment method that the Court of Appeals approved in *Gore Enterprise Holdings,* and this Court approved in *Conagra Brands, Inc., et al., v. Comptroller,* 2015 WL 854140 (Md. Tax Ct. 2015) and *Staples, Inc., et al. v. Comptroller,* 2015 WL 3799558 (Md. Tax Ct. 2015). As in those cases, the apportionment method here reflects a reasonable sense of how Manpower's income is generated by "captur[ing] the royalty...expenses of" the operating companies that did pay taxes (Maryland Operating Entities) because those "expenses...simultaneously constituted the income of" Manpower that had not paid taxes. *Gore Enterprise Holdings,* 437 Md. At 533.

Manpower contends that the Comptroller was required to use the apportionment formula in Tax General Article § 10-402(a)(2) and (c)(1) and Code of Maryland Regulations 03.04.03.08(C) to ascertain the income attributable to and taxable by Maryland and could not use an alternative formula. The Court of Appeals has rejected that argument and held that the Court can look to the realities of the relationship between the companies to fairly determine the amount of income that is traceable to Maryland. The Comptroller is not limited to using the statutorily or regulatorily prescribed formulas when doing so would yield an apportionment factor which does not fairly represent the taxpayers' activities in Maryland. The alternative formula used by the Comptroller captures the expenses claimed by the operating entity, expenses which simultaneously constituted income to the owner of the intangible asset or management service provider and does not distort the proportion of income traceable to Maryland.

Finally, Manpower asks this Court to waive both penalties and interest for reasonable cause. Manpower asserts that it had a reasonable basis for challenging the law in this instance and that it acted in good faith in bringing its petition. Under Maryland law, penalties and interest differ both in function and in purpose. With respect to function, penalties punish the taxpayer for the failure to comply with the revenue laws of the Tax-General Article of the Annotated Code of Maryland. Interest, on the other hand, is imposed from the date on which the tax is due until the tax is paid. Interest is both an incentive to comply with the law *and* compensation to the State for the loss of the use of the money owed to it.

The Court finds that reasonable cause has been established by Manpower to waive the penalty as well as interest prior to the date the Comptroller issued assessments on June 4, 2010, due to the timeframe of the audit (1996-2003) and the law which has evolved after the decision of the Court of Appeals in *Comptroller of the Treasury v. SYL, Inc.*, 375 Md. 78 (Md. 2003).

Accordingly, this 31st day of October, 2018, for the foregoing reasons, the Maryland Tax Court affirms the assessment of tax with interest from June 4, 2010, abates interest prior to June 4, 2010, and further abates the penalty.

CC: Jeffrey G. Friedman, Esq.
Brian L. Oliner, Esq.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.