



July 30, 2010

## Tax Battle – All Square between P&G and IRS

A US District court judge made two separate rulings each favoring one side in the legal tussle between Proctor and Gamble (P&G) and the IRS. Federal Judge Timothy Black is presiding over the \$435 million court battle in which he has thus far made two rulings.

On June 25, the Cincinnati federal court judge ruled that P&G is eligible to a \$21 million tax break for its research and development expenses that were disallowed by the IRS. In his judgment, Judge Black agreed with P&G's interpretation of the tax law and overruled the IRS stand on the matter as 'arbitrary and...not backed up by legislative history'.

In an IRS audit, the agency included P&G's transfer of its funds between the parent company and its subsidiaries into the company's gross receipts. This action caused the amount by which P&G's research and development costs exceeded a percentage of their gross receipts to become lower. As a result, the company's usual 20% tax credit for 2001 to 2005 was also reduced and P&G paid the IRS \$21 million arising from this audit.

Judge Black's ruling means that P&G is entitled to a refund from the IRS for the \$21 million it paid.

However in a separate ruling on July 6, Judge Black sided with the IRS over another matter. In this case, P&G contended that it paid double taxes to Japan and South Korea amounting to \$12 million out of the same income stream. But here the court ruled that P&G was obligated to seek a refund from Japan. Since P&G did not seek such a refund, it could not claim a credit for those taxes with the IRS.

Judge Black stated that American companies with business dealings overseas should seek tax reductions from their host countries before claiming foreign business tax breaks at home if the taxes were improperly imposed. If this practice is not carried out, the US government will perpetually be straddled with the expenses.

These two cases are minor compared to the ongoing one where the dispute is over the value of patents P&G donated to various universities and research institutions from 2001 to 2004. In this case, P&G assessed its 28 patents at \$908 million but the IRS valued these technologies only at

\$186 million, a whopping \$722 million less. The IRS accordingly levied extra taxes on P&G based on the \$722 million.

This case is now set to go to trial this fall.

Darrin T. Mish is a veteran, nationally recognized tax attorney who has focused on providing IRS help to taxpayers for over a decade. He regularly travels the country training other attorneys, CPAs and enrolled agents on how to handle their toughest cases with the IRS. He is highly ranked among the top attorneys in the country, with an AV rating from Martindale-Hubbell and a perfect 10 on Avvo.com. Martindale-Hubbell has also honored him with a listing in their Bar Register of Preeminent Lawyers. He is a member of the American Society of IRS Problem Solvers and the Tax Freedom Institute. With clients on every continent but Antarctica, he has what it takes to solve your IRS problems no matter where you live in the world. If you would like more information about his practice and how he can help you, please call his office at (813) 229-7100 or toll free at 1-888-GET-MISH.