

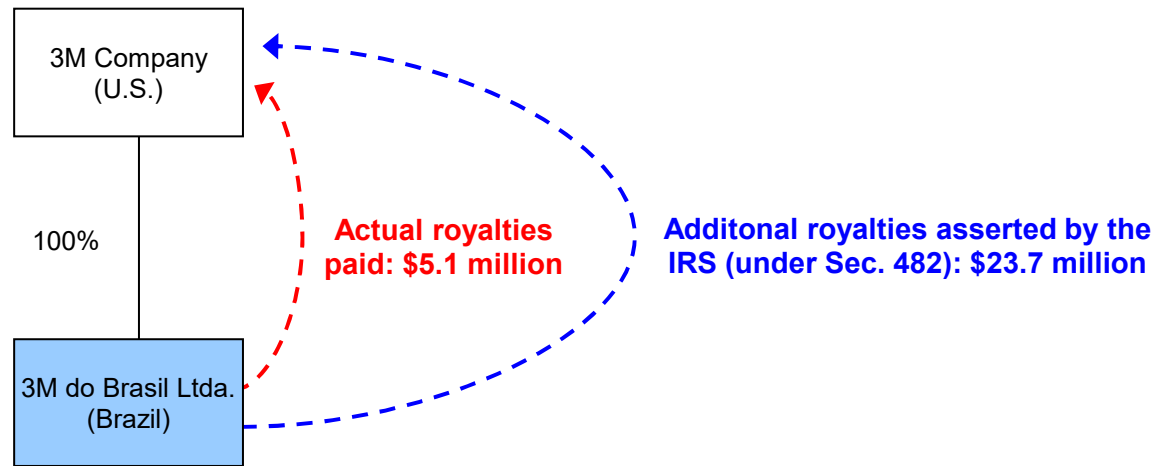
**3M Company v. Commr.,
__ F.4th __ (8th Cir. 2025)**

**IRS Could Not Reallocate
Income (Royalties) That
Could Not Be Received**

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**Brazilian law limited (i.e.,
blocked) the amount of royalties
that could be paid by 3M do
Brasil to 3M Company.**

**The court held that the IRS could
not allocate any income above
what Brazilian law allowed.**



In 2006, 3M Company received \$5.1 million in royalties from its Brazilian subsidiary (3M do Brasil) for the use of intellectual property. Brazilian law capped the amount 3M do Brasil could pay in royalties to 3M Company. Under Sec. 482, the IRS reallocated nearly \$23.7 million in extra royalty income to reflect what, in its view, 3M Company should have received from 3M do Brasil.

The 8th Circuit concluded that the IRS could only reallocate the amount that 3M do Brasil was legally allowed to pay as royalties to 3M Company under Brazilian law. In *Commr. v. First Sec. Bank of Utah, N.A.*, 405 U.S. 394, 403 (1972), the Supreme Court stated that “income” does not include what the taxpayer “did not receive and that he was prohibited from receiving.” In addition, the 6th Circuit had previously held that the IRS could not tax a domestic parent company on royalties it could not legally receive from a foreign subsidiary. *Procter & Gamble Co. v. Commr.*, 961 F.2d 1255, 1259 (6th Cir. 1992).

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