

Income/Franchise:

Illinois: ALJ Says Affiliate Must be Included in Combined Return and is Not an 80/20 Company

Decision No. 16 TT 82 and 17 TT 16, Ill. Independent Tax Trib. (4/13/21). In a ruling involving a taxpayer filing Illinois income and replacement tax returns on a combined basis for the tax years at issue, an administrative law judge with the Illinois Independent Tax Tribunal recently denied the taxpayer's motion for summary judgment – holding that it failed to successfully show it could exclude a certain affiliate from its return as an "80/20 company." In doing so, the judge reasoned that a single-member limited liability company (SMLLC) owned by that affiliate must be disregarded under the facts as it "has no economic substance" and similarly the SMLLC cannot be considered the employer of certain expatriates, which potentially could have helped its owner (the taxpayer's affiliate at issue) qualify as an 80/20 company. Consequently, the judge concluded that the affiliate cannot be considered an 80/20 company under the facts and, instead, must be considered a company conducting business within the United States and thus includable in the taxpayer's Illinois unitary group. Please contact us with any questions.

URL: <https://www2.illinois.gov/sites/taxtribunal/decisions/Documents/Decisions-Rulings/44.PepsiCoDecision04132021.pdf>

— Brian Walsh (Chicago)
Managing Director
Deloitte Tax LLP
briawalsh@deloitte.com

Gregory Bergmann (Chicago)
Partner
Deloitte Tax LLP
gbergmann@deloitte.com

Olivia Schulte (Washington, DC)
Manager
Deloitte Tax LLP
oschulte@deloitte.com

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.