

Income/Franchise:

Virginia: Noncodified Provisions Related to Intangible Expense “Addback” Statutes Remain in Effect

Chapter 552 (H.B. 1800, Budget Bill), enacted 4/7/21. Applicable retroactively for taxable years beginning on and after January 1, 2004, Virginia’s recently enacted “Budget Bill” includes non-codified provisions that limit the “subject to tax” statutory exception to Virginia’s intercompany intangible expense addback statute – regarding income that is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government – to the portion of intercompany expense payments to the related member that owns the intangible property that corresponds to the portion of the related member’s income where it has sufficient nexus to be subject to taxes based on or measured by net income or capital in other states – *i.e.*, on a post-apportionment basis.

URL: <https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/3/3-5.09/>

Also retroactively for taxable years beginning on and after January 1, 2004, the Budget Bill includes non-codified provisions that limit the unrelated party “safe harbor” statutory exception to Virginia’s intercompany intangible expense addback statute to the portion of such income derived from licensing agreements for which the rates and terms are comparable to the rates and terms of agreements that the related member that owns the intangible property has entered into with unrelated entities.

Note that similar non-codified provisions also were included in state budget bills enacted in previous years (since 2014), and thus they are essentially being continued with this most recent enactment. Please contact us with any questions.

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