

Income/Franchise:

Virginia: Trial Court Upholds Assessments Involving Intercompany Royalties and “Subject-to-Tax” Addback Exception

Case No. CL 12-1774, Va. Cir. Ct., City of Richmond (5/13/21). On remand from the Virginia Supreme Court for a determination of what portion of the royalty payments the taxpayer paid to its Illinois affiliate was actually taxed by another state, and therefore excepted from Virginia’s related-party intangible expense addback statute, the City of Richmond, Virginia, Circuit Court (Court) granted the Virginia Department of Taxation’s motion for summary judgment to uphold the underlying Virginia corporate income tax assessments involving select other states at issue and denied the taxpayer’s partial motion for summary judgment to abate them. In doing so, the Court found that the taxpayer failed to meet its burden to show that the royalty payments at issue were apportioned to and actually taxed in other states in order to correctly calculate and receive the exception under Va. Code section 58.1-402(B)(8)(a), in accordance with the Virginia Supreme Court’s holding in 2018 – specifically, “the record simply does not show how or in what amount the royalty payments were subjected to tax, and thus excepted from the add back statute” in the combined return states at issue, Georgia or Maryland.

In the same case in 2018, the Virginia Supreme Court held that Virginia’s “subject-to-tax exception” applies only to the extent that the royalty payments were actually taxed by another state (*i.e.*, on a post – apportionment basis); and that the subject-to-tax exception applies as long as royalties are actually taxed regardless of which entity paid the tax (*i.e.*, even if paid by an affiliate, as part of a combined filing or statutory add back) [see Case No. 160681, Va. (3/22/18) for more details on this 2018 ruling]. Please contact us with any questions.

URL: <http://www.courts.state.va.us/opinions/opnscvwp/1160681.pdf>

— Dave Vistica (Washington, DC)
Managing Director
Deloitte Tax LLP
dvistica@deloitte.com

Jennifer Alban-Bond (McLean)
Senior Manager
Deloitte Tax LLP
jalbanbond@deloitte.com

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