

Income/Franchise:

Montana Tax Appeal Board Holds that S Corp and Unitary Subs May Apportion Combined Income

Decision No. IT-2020-40, Mont. Tax App. Bd. (1/20/22). In a ruling involving an S corporation that operated a multistate media and publishing business through various subsidiaries (limited liability companies), the Montana Tax Appeal Board held in the taxpayer's favor that it operated a unitary business with its subsidiaries and was entitled to apportion the combined income it received from them, including from its Montana-based subsidiary, under Montana's three-factor apportionment method rather than allocate the income it received from the Montana-based subsidiary (*i.e.*, without apportionment) as asserted in the Montana Department of Revenue's (Department's) underlying assessment. Among its arguments, the Department unsuccessfully claimed that because the taxpayer and Montana-based subsidiary constituted pass-through entities rather than C corporations, and because "unitary principles apply only to C corporations and not S corporations," the taxpayer must allocate the income it received from the Montana-based subsidiary under Administrative Rules of Montana (ARM) 42.9.107 to "preserve the source and character of the income." The Department also unsuccessfully claimed that the taxpayer could not apportion its income under the Multistate Tax Compact, because it was not a taxpayer subject to an income tax. Please contact us with any questions.

URL: <https://mtab.mt.gov/decisions/Pioneer-Final-Decision-1-20-2022.pdf>

— Robert Waldow (Minneapolis)
Principal
Deloitte Tax LLP
rwaldow@deloitte.com

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

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