

Income/Franchise:

North Carolina ALJ Holds that Denying Deductions for Intercompany Loan Receivables is Unconstitutional

Admin. Hearing No. 20 REV 04215, N.C. Office of Admin. Hrgs. (12/30/21). In a case involving a taxpayer's North Carolina corporate franchise tax liability computed under the capital stock base, an administrative law judge with the North Carolina Office of Administrative Hearings held that denying the taxpayer deductions for intercompany loan receivables owed by its affiliates not doing business in North Carolina would constitute a violation of the dormant Commerce Clause as applied to the taxpayer. In doing so, the judge reasoned that by allowing the taxpayer a deduction for affiliate receivables only if the debtor pays North Carolina franchise tax under N.C. Gen. Stat. § 105-122(b) denies the taxpayer a deduction where the debtor is not incorporated in or does not do business in North Carolina and that such "differential treatment" based on the location of the debtor's business in-state or out-of-state violates the dormant Commerce Clause in this case. Accordingly, the judge reversed and rescinded the North Carolina Department of Revenue's underlying notice of final determination to the extent that it conflicts with the holding. Please contact us with any questions, including related taxpayer considerations.

URL: <https://files.nc.gov/ncoah/documents/Hearings/20-REV-04215-Philip-Morris-USA-Inc-v-NC-Department-of-Revenue.pdf>

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