

Income/Franchise:

California Office of Tax Appeals Addresses Consequences of S Corporation's IRC § 338(h)(10) Transaction

Case Nos. 20046125 and 20046127, Cal. Off. of Tax App. (12/9/21). In a case involving an out-of-state S corporation manufacturer that sells its products nationwide, including in California, and which entered into a stock sale transaction in 2013 that was treated as an asset sale under Internal Revenue Code (IRC) section 338(h)(10) wherein the buyer agreed to pay an initial purchase price and make certain deferred contingent earnout payments, the California Office of Tax Appeals held that, under the provided facts:

URL: https://ota.ca.gov/wp-content/uploads/sites/54/2022/02/20046125_Amarr-Co_Opinion_020322wm.pdf

- The corporation's unreported installment gain must be accelerated for inclusion in its California taxable income for the 2013 short tax year;
- The income from the deemed asset sale relating to intangibles such as goodwill constitutes business income for California purposes; and
- Gross receipts from the deemed asset sale must be excluded from its California sales factor pursuant to California Regulation section 25137(c)(1)(A) as receipts arising from a substantial and occasional sale.

Please contact us with any questions.

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