

Income/Franchise:

Tennessee DOR Says No Franchise Tax Addback Required for Short-Term Intercompany Trade Payables

Letter Ruling No. 22-03, Tenn. Dept. of Rev. (5/4/22). The Tennessee Department of Revenue (Department) issued a letter ruling on application of the Tennessee franchise tax “addback” requirement for certain intercompany debt, holding that the foreign corporation in this case is *not* required to add back the short-term intercompany trade payable owed by its US branch to an affiliate in arriving at its net worth calculation. Under the facts, the taxpayer is a foreign corporation that conducts its US operations through a US branch, which to serve its customers, purchases inventory from the taxpayer’s affiliate at an arm’s length price pursuant to an executed Advance Pricing Agreement (APA) with the Internal Revenue Service that results in the creation of the short-term intercompany trade payable. This trade payable is settled on a monthly basis, reported as a short-term or current liability on the taxpayer’s balance sheet, and reflected likewise on Schedule L of the federal Form 1120-F. The taxpayer files its Tennessee franchise and excise tax return on a separate entity basis and reports the activity of the US branch. Under the provided facts, the Department reasoned that the intercompany trade payables in question were correctly classified as current liabilities for financial reporting purposes that should *not* be treated as affiliated debt, and thus the addback provision under Tenn. Code Ann. section 67-4-2107(b)(1) does *not* apply. Please contact us with any questions.

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/fae/22-03fe.pdf>

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