

Income/Franchise:

Illinois Tax Tribunal Affirms Penalties in 80/20 Company Scenario Deemed a Sham Transaction

16 TT 82 and 17 TT 16, Ill. Independent Tax Trib. (9/12/22). Following its 2021 ruling that a taxpayer's affiliate must be included in its combined Illinois income and replacement tax return because the affiliate failed to qualify as an "80/20 company" given that its ownership in a single-member limited liability company (SMLLC) was deemed to lack economic substance [see *State Tax Matters*, Issue 2021-16, for more details on this previous ruling], the Illinois Independent Tax Tribunal (Tribunal) now holds in the same case that the taxpayer's underlying late penalties must *not* be abated. In doing so, the Tribunal explains that the underlying SMLLC was a "shell corporation with no legitimate business purpose or economic reality" and that considering all facts and circumstances, the taxpayer "did not exercise ordinary care and business prudence based on the clarity of existing law and its tax department's experience, knowledge, and education" in creating the SMLLC and the "resulting tax positions it took with regard [to] its State of Illinois income tax determinations and liabilities." Please contact us with any questions.

URL: <https://taxtribunal.illinois.gov/content/dam/soi/en/web/taxtribunal/documents/rules-decisions/16TT82-17TT16-pepsico.pdf>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210423_3.html

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